

M E M O R A N D U M

TO: Council, AP and SSC Members

FROM: Jim H. Branson
Executive Director

DATE: September 17, 1987

SUBJECT: Special Reports

ACTION REQUIRED

Special Reports on the following topics:

1. Dumping fish carcasses and pollution problems in the Unimak Pass area.
2. Yellowfin sole joint venture fishery off Togiak.
3. MRC trawl development experiment in Bristol Bay.
4. Pilot Domestic Observer Program.

BACKGROUND

The first two items follow up status reports sent to you this summer from the Northwest and Alaska Fisheries Center. The Center has been analyzing survey samples and drift experiments in the Unimak area and will report their latest findings. The joint ventures off Togiak through May 30, took 57,490 mt groundfish, 92% yellowfin sole and other flatfish. The herring bycatch was 92 mt and no salmon were observed. The fishery closed in late June and a final tally of bycatch may be available.

The S-K funded trawl development and crab bycatch study just west of 162°W in Zone 1 commenced in early August and ended September 12. A progress report for September 1-7 is under B-7(a) and additional results may be available from the Center.

The last report is a brief update by Ron Dearborn, Alaska Sea Grant, on the status of the Council's Pilot Domestic Observer Program.



AGENDA B-7(a)
SEPTEMBER 1987

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest and Alaska Fisheries Center
7600 Sand Point Way Northeast F/NWC
BIN CI5700, Building 4
Seattle, Washington 98115

SEP 14 1987

September 8, 1987

MEMORANDUM FOR: F - William Evans
FROM: F/NWC - William Aron
SUBJECT: Progress Report--Crab Bycatch Study,
September 1-7

		F/NWC:GS

The fourth week of the S-K funded crab bycatch study has been completed. A total of 234 trawls have been taken, 180 in the factorial experiment. The vessels are now making the final exchange of nets and the completion of the 240 tows in the experiment should occur within this week. The ROV Ocean Surveyor is in operation and the crew reports very good underwater visibility.

Preliminary catch information:

Yellowfin sole	3,081 mt	Red king crab	19,090 individuals
Other flatfish	946 mt	<u>Bairdi</u> Tanner crab	55,949 individuals
Cod	538 mt	Halibut	9,599 individuals
Other fish	366 mt		
<hr/>			
Total	4,931 mt		

The experiment is approaching the Bairdi crab limit. Instructions are being sent to the field party to monitor the catch closely and take any necessary steps to assure that the ceilings are not exceeded, including termination of the work.

- cc: A. Thomson
J. Branson
R. McVey
D. Collinsworth
R. Schmitt
NRC
MRC
J. Brennan
K. Ford
B. Woods
M. Pedersen
R. Otto
R. Schaefer





B 7 (2)

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest and Alaska Fisheries Center
Resource Ecology and Fisheries
Management Division
7600 Sand Point Way Northeast
BIN C15700, Building 4
Seattle, Washington 98115-0070

September 15, 1987 F/NWC2:RN:4.22

MEMORANDUM FOR: F/NWC2 - Rich Marasco
FROM: F/NWC2 - Russ Nelson *RM*
SUBJECT: Summary of the Bycatch of Prohibited Species in the Yellowfin Sole/Flatfish Joint Venture in Area 514 (Including Togiak) of the Bering Sea, 1987.

The following summary of the bycatches of prohibited species in the 1987 yellowfin sole/flatfish fishery conducted in area 514 (Figure 1) of the Bering Sea is provided in response to the request of the North Pacific Fishery Management Council for information on the joint venture conducted in the area around Togiak. At this time, the only information we have available for the fishery conducted in that general area is from our in-season estimates of catches which are based on the areas shown in Figure 1. Area 514 is the area which includes the fisheries conducted near Togiak. Data which pertain specifically to Togiak will not be available until sometime during the first quarter of 1988.

Joint venture fisheries targeting on yellowfin sole and flatfish landed 138,010.3 t of groundfish in 1987 in area 514 of the Bering Sea. The composition of the groundfish catch is shown in Table 1. The combined catches of yellowfin sole and other flatfish species composed 94.6% of the total groundfish catch. Incidental catches of all the major prohibited species including Pacific herring occurred within the fishery. Those incidental catches and the corresponding bycatch rates expressed either in terms of percent by weight in the catch or number per ton of groundfish are listed in Table 2. The bycatches of chinook salmon, other salmon, all species of king crab and Chionoecetes bairdi were all generally low. The bycatch rates for salmon and king crab species were all less than 0.01 animals per ton of groundfish catch. The bycatch of C. baridi averaged 0.286 crab per ton. The bycatch of herring of 374.7 t was equivalent to 0.25 % of the total groundfish catch. The bycatch of 119,411 halibut averaged 0.865 halibut/t or 0.23 % of the groundfish catch by weight. Approximately, 1.6 million other Tanner crab (essentially 100% C. opilio) were taken in the fishery in area 514.



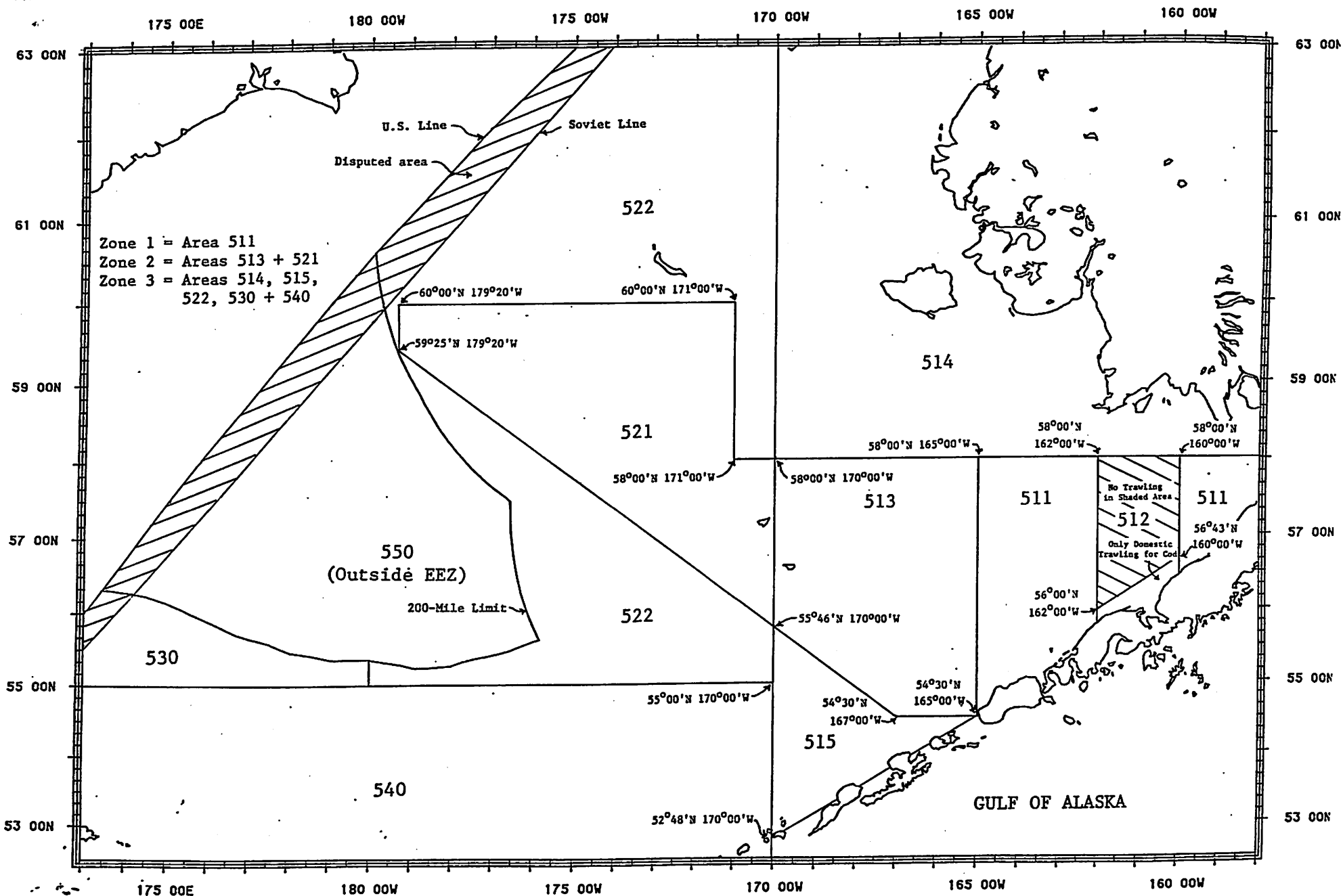


FIGURE 1. BERING SEA SUBAREAS USED TO ESTIMATE GROUND FISH AND JOINT VENTURE CATCHES IN 1987.

TABLE 1.--The estimated catches (metric tons) of groundfish taken in the 1987 yellowfin sole/flatfish joint venture fishery conducted in Area 514 of the Bering Sea.

SPECIES	CATCH (METRIC TONS)	% OF TOTAL
YELLOWFIN SOLE	120,747.1	87.5%
OTHER FLATFISH	9,837.6	7.1%
PACIFIC COD	3,667.9	2.6%
POLLOCK	2,093.6	1.5%
SABLEFISH	0.0	0.0%
ATKA MACKEREL	0.1	<0.1%
POP COMPLEX	0.0	0.0%
OTHER ROCKFISH	0.0	0.0%
TURBOTS	14.5	<0.1%
OTHER FISH	<u>1,649.5</u>	1.2%
TOTAL	138,010.3	

TABLE 2.--Estimated catches of prohibited species and associated bycatch rates in 1987 yellowfin sole/flatfish joint venture fishery in Area 514 of the Bering Sea^{1/}

SPECIES	ESTIMATED CATCH	BYCATCH RATE ^{1/}
HERRING	374.7 T	0.25 %
HALIBUT	119,411 fish	0.865 halibut/t
	312.9 T	0.23 %
CHINOOK SALMON	93 fish	0.0006 fish/t
OTHER SALMON SPECIES	470 fish	0.003 fish/t
RED KING CRAB	10,299 crab	0.075 crab/t
BLUE KING CRAB	245 crab	0.002 crab/t
OTHER KING CRAB SPECIES	18 crab	0.0001 crab/t
C. BAIRDI TANNER CRAB	39,423 crab	0.286 crab/t
OTHER TANNER CRAB SPECIES	1.6 Million crab	11.867 crab/t

^{1/} The bycatch rates of herring and halibut are expressed in terms of % by weight of total groundfish catch. The bycatch rates of halibut, king crab species, salmon species, and Tanner crab species are expressed in terms of number per ton of groundfish catch.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259
 DURING SESSION:
 P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLAIR/LAKE IYAMNA

SEP 21 1987

DISTRICT N

ACTION	ROUTE TO	INITIAL
	EYES DIR	
	Deputy Dir.	
	Admin. Off.	
	Exec. Sec.	
	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	
	Enrollment	
	Sec. Bkln.	
	Gen. Typist	

September 16, 1987

Mr. Jerry Liboff
 Nushagak Fish and Game Advisory Committee
 P.O. Box 646
 Dillingham, Alaska 99576

Dear Mr. Liboff:

Senator Zharoff asked me to provide you with the following in response to your request for information about the 1987 yellowfin sole joint venture fishery in Bristol Bay, and how to bring your concerns about this fishery to the attention of the appropriate agencies.

The permits for the joint venture operations are approved by the North Pacific Fishery Management Council. The council is scheduled to meet in Anchorage on September 23-25 and the first week of December. Enclosed is a copy of the agenda for the September meeting. At its September meeting, I understand the NPFMC will begin to review the status of the Bering Sea joint ventures and the 1988 fisheries apportionment, with final decisions to be made in December. Probably the best way for both the Nushagak Fish and Game Advisory Committee and any other interested parties to make their views known about the Bristol Bay yellowfin sole joint venture would be to write the council with their specific concerns and recommendations. The comments may be addressed to the attention of Denby Lloyd, Bering Sea Plan Coordinator, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK, 99510. Please note that the council's September agenda also includes a general comment period.

Before it takes action on this matter, if any, the NPFMC will probably want to know exactly how large a by-catch the joint venture takes in Bristol Bay. Mr. Larry Cotter, an Alaskan NPFMC member, provided me with the following information about the by-catch for the 1987 yellowfin sole joint venture fishery in Sub-Area 514, which includes the northern part of Bristol Bay. The boundaries of Sub-Area 514 are north of 58 degrees latitude and east of 170 degrees longitude. The total 1987 yellowfin sole catch was 135,795 metric tons. The by-catch totals were 563 salmon (93 chinooks, and 473 other, assumed to be chums), 119,355 halibut (an average of 5 lbs. each), and 352.6 metric tons of herring. This data was compiled by National Marine Fisheries Service observers onboard the joint venture boats. To get a true picture of the by-catch, however, we still need to obtain the times and exact locations. Sub-Area 514 is a large area.

Our office sympathizes with your concerns about the number of migrating salmon, herring and halibut being caught in this fishery. The salmon and herring, of course, are totally utilized by the existing Bristol Bay

commercial fisheries. Any herring and salmon taken as incidental catch represent just that many fewer dollars that would otherwise be earned by Bristol Bay fishermen. Also, it does not seem fair that the joint venture should be allowed to take hundreds of thousands of pounds of juvenile halibut while the Bristol Bay fishermen have been denied, for biological reasons, their request for a commercial halibut allocation.

One person you might contact for assistance in approaching the council is Mr. Henry Mitchell, another Alaskan NPFMC member and the executive director of the Bering Sea Fishermen's Association. He has worked closely with Bristol Bay fishermen in the past on a variety of issues and can be reached in Anchorage at 279-5519 or 277-5845. In a recent conversation, Mr. Mitchell told me that the company running the joint venture -- Marine Resources International, Inc. -- is interested in working with the local fishermen to try to resolve the by-catch problems. I attempted to contact Mr. Phil Chitwood of Marine Resources, at Mr. Mitchell's suggestion, to confirm this, but was unable to reach him. I will keep trying and will pass on to you any information I obtain. Mr. Mitchell thought there was a good possibility this problem could be worked out in direct meetings between the local Bristol Bay fishermen and Marine Resources. This approach may be worth exploring.

I am sending copies of this letter to a number of state and federal officials so they will be aware of your concerns and, perhaps, able to offer assistance in solving this problem.

If you have further concerns or need additional information, please do not hesitate to contact our office.

Sincerely,



Karl Ohls
Legislative Assistant

cc: Gov. Steve Cowper
Sen. Fred Zharoff
Rep. Adelheid Herrmann
Commissioner Don Collinsworth, ADF&G
Mr. Jim Branson, exec. dir., NPFMC
Mr. Larry Cotter, NPFMC
Mr. Oscar Dyson, NPFMC
Mr. Henry Mitchell, NPFMC
Mr. Robert Heyano
Chrmn., Nushagak Fish & Game Advisory Committee



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Northwest and Alaska Fisheries Center
 Resource Assessment and Conservation
 Engineering Division
 7600 Sand Point Way Northeast
 BIN C15700, Building 4
 Seattle, Washington 98115-0070

September 22, 1987

MEMORANDUM FOR: F/NWC - William Aron
 FROM: F/NWCl - Gary Stauffer
 SUBJECT: Summary of Saltonstall-Kennedy (S-K) Bycatch Experiment

The field studies for the S-K crab bycatch experiment conducted in the Bering Sea were completed on September 12. The objectives of the experiment, as outlined in the cruise plan, were successfully accomplished. The experiment was carried out in Zone 1 in the 1 degree square bounded by 57-58°N and 162-163°W. A total of 307 net tows were made. The total includes the 240 tows in the 4-vessel factorial experiment; 33 tows taken during the first week of the field work used to search and locate research areas for day and nighttime tows with appropriate concentrations of yellowfin sole and king and Tanner crab; 22 tows to monitor time and area changes in catch rates were taken by the Oceanic, the fifth vessel in the experiment; and 12 invalid tows. Net tows were classified invalid if a net was ripped or caught a derelict crab pot. Catch data were recorded for all tows and will be available for analysis. Difficulties in sampling the catch on board the processor were encountered in the initial week of the survey. These problems were resolved prior to the start of the factorial experiment though.

The four nets used in the experiment were Bering Sea Combination 101/130 trawls. Two were control nets without modifications. The other two were identical to the controls but one was fitted with a crab chute and the other with a crab panel replacing the belly (descriptions attached).

The ROV Ocean Surveyor, the Manta replacement, was operable for seven days, giving a number of hours of good underwater observations of net operations and the trawl path.

Tallies of total catch by species group from field notes and the associated caps set for this experiment are:



2

<u>Species</u>	<u>Catch</u>	<u>Cap</u>
Yellowfin sole	3,841 mt	4,500 mt
Other flounder	751 mt	3,000 mt
Pacific cod	699 mt	
Pollock	448 mt	1,000 mt
	<hr/>	<hr/>
Total	5,739	8,500
Red King crab	24,545 crab	72,200 crab
<u>Bairdi</u> Tanner crab	67,845 crab	70,000 crab
Halibut	12,011 fish	-

Preliminary examination of field notes suggests that the experimental net fitted with the crab panel shows a lower number of crab caught per ton of fish. Although the industry organizations involved in the project would like to release the preliminary information summarized from field notes, we have advised them to wait to release results pending an edit of the data and completion of the statistical analysis and final report. We anticipate that verification of the data files will be complete by the end of September. A cruise report documenting the field research and the catch data for all 307 tows will be complete in mid-October. The primary statistical analysis of the factorial experiment for the net comparisons and final data summaries will be completed by early November, with the final report finished by January 1988. At the present time, we expect to be prepared to report project results to the Council at the December meeting. We anticipate that various studies of the experimental data will continue at the Center throughout the next 12 months. We have not yet had the opportunity to evaluate and schedule the tasks of analyzing the underwater video footage and crab viability information.

Attachments

NOR EASTERN TRAWL SYSTEMS, INC.

July 21, 1987

Description of the Operating Principles and Construction of a Separating Section for Removing Crabs from Flatfish Trawls

Unwanted bycatches of various species of crabs pose significant conservation, management, and public relations problems in several flatfish (flounder, sole, etc.) bottom trawl fisheries in the Pacific Northwest, as well as other regions around the world. At the current level of knowledge it is difficult to envision a bottom trawl that can efficiently harvest flatfish without the possibility of also capturing at least some of any crabs or other crustaceans that may be present on the same grounds. It would be desirable if a means could be developed for selectively allowing crabs that have entered the gear to escape unharmed while the gear is still fishing on the seabed. At the same time, any such sorting system must not permit unacceptably large quantities of fish to escape if it is to be accepted by commercial fishermen.

During an experiment aimed at assessing the viability of red king crabs captured in trawls it was demonstrated that such crabs could come across the footrope of a bottom trawl, pass down the trawl to the codend, be held there through the remainder of the tow with moderate, but steadily accumulating quantities of captured fish and other material, undergo the gear retrieval process, and be dumped on deck without suffering excessively high levels of injury or mortality. It is reasonable to assume that any adverse impacts might be reduced even further if crabs in the trawl could somehow escape relatively quickly, before they enter the codend.

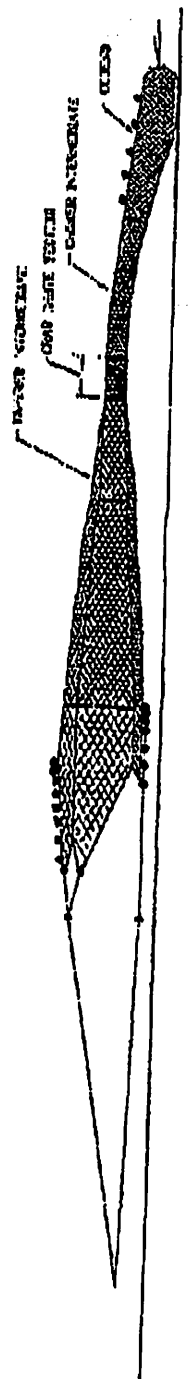
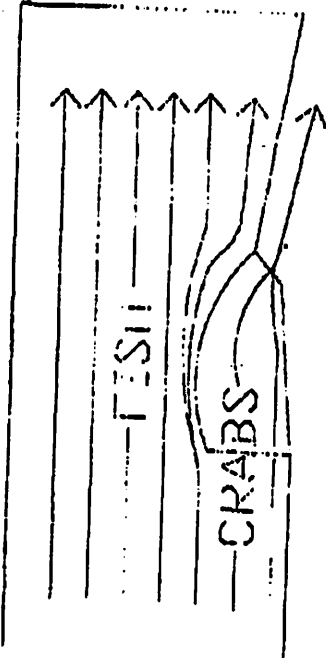
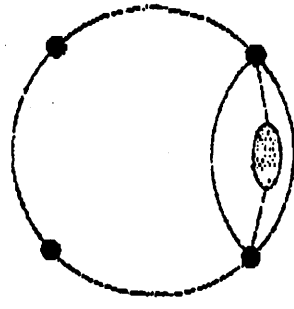
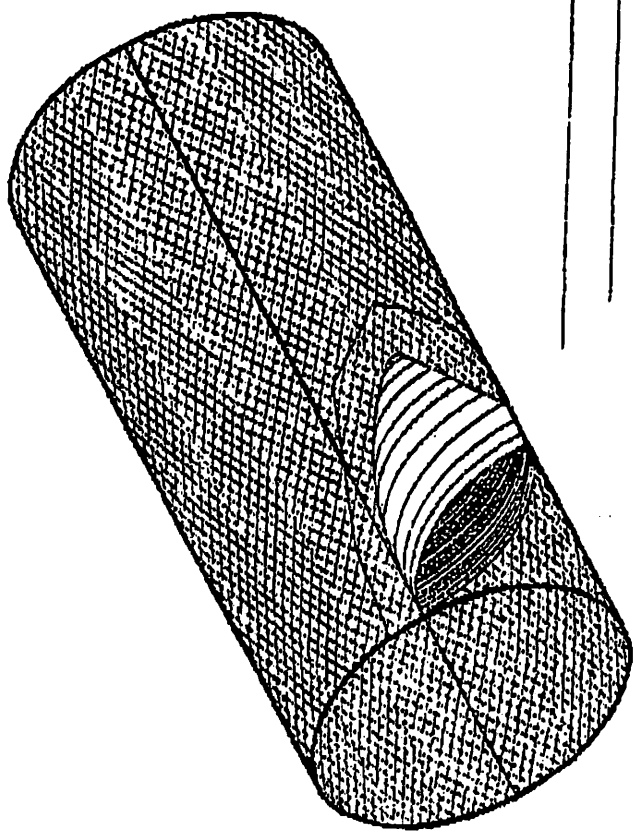
Fisheries technology researchers using underwater television to observe bottom trawls during fishing operations have acquired a great deal of useful, pertinent information on fish behavior. Workers aboard a Scottish research vessel observed the reactions of fish to a conical fabric funnel installed within a bottom trawl. They made two significant observations: 1) the funnel appeared to block the flow of water in the area of its mouth, pushing along a mass of turbulent water which spilled over and past the outside of the funnel; and, 2) fish were extremely reluctant to pass into or through the funnel, struggling until completely exhausted to stay in front of it even though passage through the funnel would have allowed them to escape out of the gear. Some of the fish observed appeared to take advantage of the mass of water carried along at the mouth of the funnel, "riding" with it and staying ahead of the funnel entrance. Other fisheries technology researchers in Norway and the U.S. have observed that flatfish within bottom trawls have a tendency to swim upwards as they pass down through the net towards the codend.

These findings suggested the design of the "Crab Chute" illustrated in the accompanying diagram. The Crab Chute is a tapered fabric funnel installed in the bottom of a bottom trawl with the funnel's mouth oriented towards the mouth of the trawl. It is installed within the net in an area through which all crabs must pass before coming to the codend and where it will be supported by the rest of the net so that it will inflate properly as the gear is towed through the water. The funnel's outlet penetrates the bottom of the net so that anything entering the funnel will be carried out of the trawl.

Since crabs have poor swimming abilities and are heavier than water, installing the funnel in the bottom of the net should ensure that most crabs will encounter it as they pass down the trawl, while keeping it out of the path of most flatfish, which have a tendency to swim upwards within trawls. Fish will be further deterred from entering the funnel by the turbulent water flows at its mouth, and perhaps by its appearance as well.

The Crab Chute has been designed so as to be as compatible as possible with commonly-used trawls, and to interfere as little as possible with normal fishing practices. The funnel is mounted within a short "tube" of netting which is tailored to fit without further modification into most of the flatfish trawls currently in use in the Bering Sea. It is made entirely out of flexible components so that it may be rolled up onto the net reel with the rest of the net, thus reducing the possibility that its use will interfere with fishing operations or cause damage to the rest of the gear. The components chosen are extremely rugged to withstand the wear-and-tear of daily fishing operations without needing any maintenance or adjustment.

NET SYSTEMS INC.	
CRAB C-DRIE SECTION	
DESIGNED BY	BILL WEST
DATE	6/16/87
PROJECT NO.	672
NAME	MSK 2121
NO. OF PAGES	472
THIS DESIGN IS THE SOLE PROPERTY OF NET SYSTEMS INC.	
UNAUTHORIZED USE IS PROHIBITED	
COPYRIGHT: © by NET SYSTEMS INC. 1987	
VERSION	16 1987
SCALE	N/A



NORTHWESTERN TRAWL SYSTEMS, INC.
July 28, 1987

Description of the Operating Principles and Construction of a Separating Panel for Removing Crabs from Flatfish Trawls

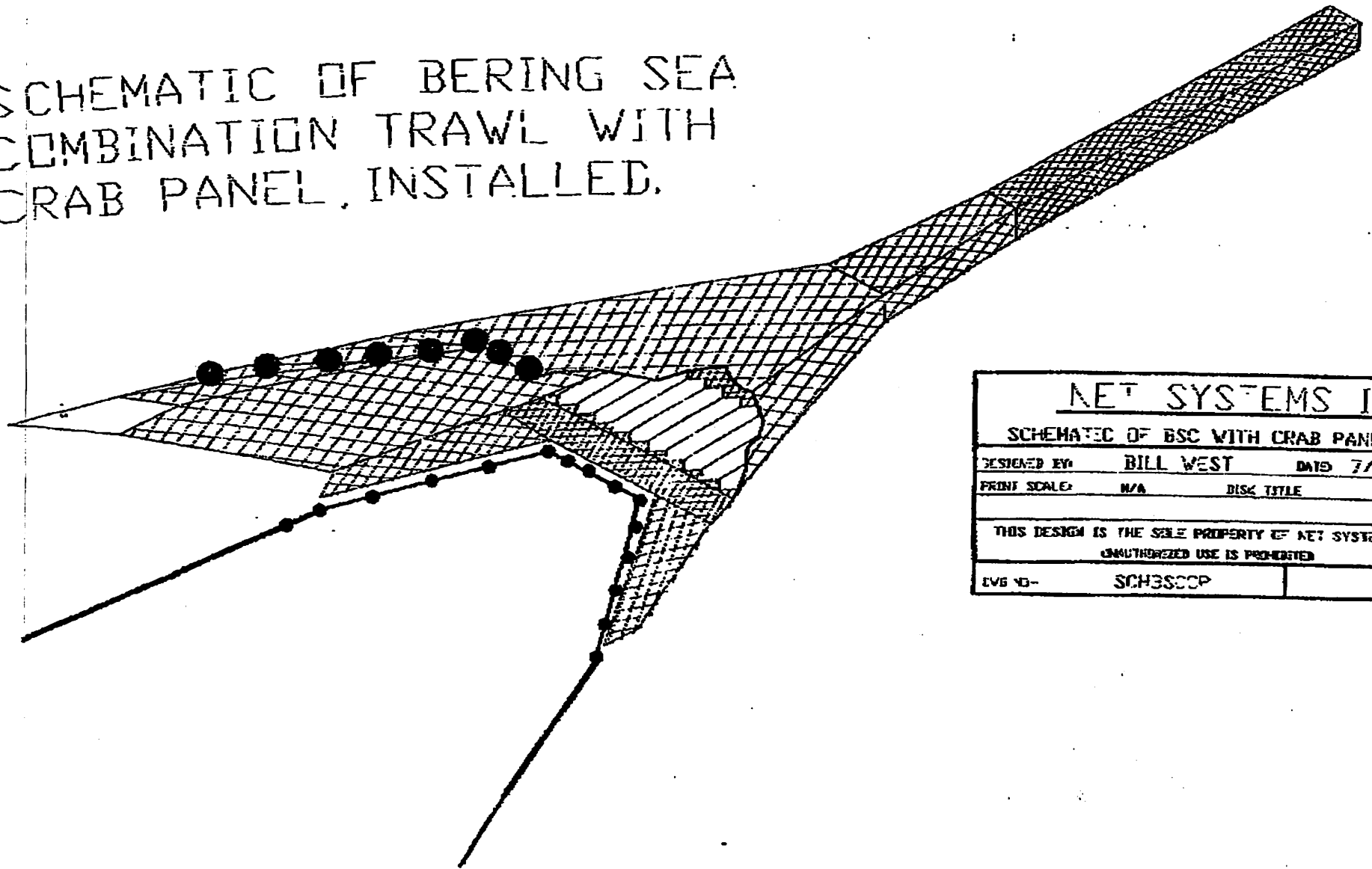
Unwanted bycatches of various species of crabs pose significant conservation, management, and public relations problems in several flatfish (flounder, sole, etc.) bottom trawl fisheries in the Pacific Northwest, as well as other regions around the world. At the current level of knowledge it is difficult to envision a bottom trawl that can efficiently harvest flatfish without the possibility of also capturing at least some of any crabs or other crustaceans that may be present on the same grounds. It would be desirable if a means could be developed for selectively allowing crabs that have entered the gear to escape unharmed while the gear is still fishing on the seabed. At the same time, any such sorting system must not permit unacceptably large quantities of fish to escape if it is to be accepted by commercial fishermen.

Fishermen participating in the 1985 and 1986 yellowfin sole joint venture fisheries first experimented with "crab panels" designed to allow crabs that had entered their trawls to drop out of them before entering the codend. These early designs consisted of panels of large (16" stretched measure) mesh netting installed across the throat of the trawl directly behind the footrope. Early results with these designs were mixed: some boats reported substantial reductions in crab bycatch with no apparent loss of fish, while other boats saw little difference or even some fish loss with no crab reduction. One common observation was that crab bycatch reduction seemed to be inversely related to crab size, i.e. the larger crabs were not falling out through the meshes of the crab panels.

These early results, mixed as they were, suggested that the principle had potential if refinements could be made. In 1986 underwater TV observations were made of bottom trawls fishing in the Bering Sea and these showed that flatfish typically enter such trawls several feet above the level of the footrope and belly panels. The TV observations also showed that the mud cloud stirred up by the passage of the footrope rose up to conceal the netting of the belly immediately behind the footrope. Taken together with the results from the initial trials with the large-mesh crab panels, a new design was developed which replaced the large mesh section with ropes running fore-and-aft in the belly, spaced several feet apart. Care was taken to ensure that this section was well within the area normally obscured by the footrope's mud cloud in the hope that fish avoiding the cloud would not detect, or would be deterred from using, the large escape area offered by the crab panel. It is hoped that crabs coming over the footrope will settle down quickly into the belly of the trawl and will drop out between the ropes, which are spaced far apart to facilitate this.

This relatively simple concept has to be carefully executed in order to be successful. A crab panel consisting of longitudinal ropes does not have the self-adjusting properties inherent in a netting panel, and thus must be carefully designed and installed to prevent distortions in either the footrope ahead of the crab panel or the belly netting aft of it.

SCHEMATIC OF BERING SEA
COMBINATION TRAWL WITH
CRAB PANEL, INSTALLED.



NET SYSTEMS INC.		
SCHEMATIC OF BSC WITH CRAB PANEL		
DESIGNED BY:	BILL WEST	DATE 7/27/87
PRINT SCALE:	N/A	DISC TITLE BHETS-4
THIS DESIGN IS THE SOLE PROPERTY OF NET SYSTEMS INC. UNAUTHORIZED USE IS PROHIBITED		
ENG NO-	SCH3300P	

21087

September 14, 1987

MEMORANDUM FOR: F - William Evans

FROM: F/NWC - William Aron *WA*

SUBJECT: Progress Report--Crab Bycatch Study,
September 8-14

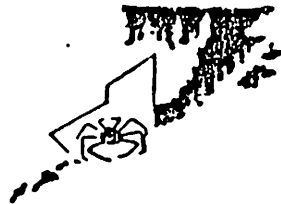
ACTION	ROUTE TO	INITIAL
Northwest and Alaska Fisheries	7600 Sand Point Way Northeast	F/NWC
Bldg C15700, Building 4 Dir.	Seattle Washington 98101	
	Exec. Sec.	
	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	
	Economist	
	Sec./Bkkr.	
	Sec./Typist	

Sampling for the S-K funded crab bycatch study ended on Saturday, September 12 when the 240th tow in the factorial experiment was taken aboard the Soviet factory ship Sulak. The Sulak and our NMFS personnel are currently enroute to Dutch Harbor, Alaska and will arrive on Tuesday, September 15. The usual weekly summary was not transmitted so most specific numbers are not available. Information relayed through other NMFS sources in Alaska, however, indicate that the final total groundfish catch was approximately 5,800 metric tons and the final tally of bairdi tanner crab was 67,845 crabs, red king crab was roughly 20,000 crabs. As you know, both crab numbers are below the ceilings established for the experiment.

- cc: A. Thomson
J. Branson
R. McVey
D. Collinsworth
R. Schmitten
NRC
MRC
J. Brennan
K. Ford
B. Woods
M. Pedersen
R. Otto
R. Schaefer

Alaska Crab Coalition (A.C.C.)

(206) 547-7560
3901 Leary Way (Bldg.) N.W.,
Suite #6
Seattle, WA 98107
FAX (206) 547-0130



September 17, 1987

TO: Jim Campbell, Chairman
NPFMC

FROM: Arni Thomson, Executive Director
Alaska Crab Coalition

RE: COMMENT ON HIGHLINERS S-K BYCATCH PROJECT

The Alaska Crab Coalition wishes to file a petition for action with the NPFMC regarding the recently completed Highliners S-K Bycatch Project NA-86-ABH-00042 conducted in Zone 1 of the Eastern Bering Sea. The ACC finds that the project violates several acts of Congress and further considers it to be a gross violation of an important industry agreement that recently resulted in establishing the foundation for Amendment 10 to the Bering Sea FMP. ACC further finds it is inexcusable that project leaders and the Director of the NAFC, Bill Aron, who closely participated in the protracted bycatch negotiations of 1986 could be so insensitive to a predictable and volatile reaction from Bering Sea crab fishermen to a federally subsidized commercial fishery for a select group of fishermen.

The attached correspondence to Bill Evans, Assistant Administrator, for NOAA, and to Bob McVey, Director, NMFS, Alaska Region, provide background information on the ACC's complaint for action. The weekly bycatch reports on the project document the extent of the crab bycatch in the project.

The enclosed legal memorandums from NOAA General Counsel in 1986 advised of the need for establishment of not just a regional, but a national policy on cooperative scientific research. Jay Johnson, NOAA GC (July 1, 1986) advised against NMFS involvement and authorization of cooperative projects without the Administrator making a determination. He also advised the Councils to develop authorizing amendments for cooperative research, to the applicable FMP's.

Johnson's concluding advice to the regions predicted the ACC's complaint for action:

To this advice, I will also add some further words of caution. Allowing a commercial fishing vessel to take and sell fish outside the existing regulatory structure holds a high potential for public

misunderstanding and abuse. If such cooperative arrangements are adopted on a wide scale without adequate internal safeguards, the agency could be subject to criticism that "insiders" are being favored with agency contracts or other commercially advantageous relationships....

...Develop an agency policy statement to prevent this opportunity to expand the agency's research from being abused and embroiling the agency in selections which might involve the appearance of conflict of interest.

Given the NMFS and NAFC disregard of NOAA GC opinions on this sensitive issue, the ACC makes these requests of the NPFMC:

1. Apply the bycatch from the S-K project to the flatfish operations in Zone 1 in 1988. Why must crab fishermen continue to bear the brunt of the burden for conservation in terms of gear restrictions and area closures.
2. Develop a process by which the NPMFC would include within FMP bycatch restrictions all bycatches, i.e. those taken not only in normal commercial fisheries, but also in experimental, exploratory or scientific activities.
3. Develop standards and procedures to insure that experimental exploratory and scientific fishing activities are not substantive commercial ventures carried out in the guise of cooperative research.
4. NMFS should develop a process aimed at insuring that S-K funds not be made available as a subsidy to commercial ventures which are otherwise profitable.
5. It is also requested that S-K proposals focused on cooperative fisheries research to be conducted in the Alaska region should be under the jurisdiction of the Alaska Region of the NMFS and Alaska Fisheries Development Foundation.

The ACC is hopeful the Council and the NMFS will adopt the necessary guidelines suggested above to prevent similar abuses from occurring.

cc: Bill Evans, Assistant Administrator, NOAA
Senator Ted Stevens
Representative Don Young
Representative John Miller
Bob McVey, Director, NMFS, Alaska Region
Don Collinworth, Commissioner, ADF&G
Ted Kronmiller, Patton, Boggs & Blow



July 31, 1987

Mr. Theodore G. Kronmiller
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D. C. 20037

Dear Ted,

Thank you for your letter of July 29th regarding the Alaska Crab Coalition's concerns about S-K Project No. NA-86-ABH-0042. When this project was approved it was to have been completed during the yellowfin sole season. I agree that the fact that the domestic yellowfin sole fishery has been closed because the allowable bycatch of Bairdi crab has been taken in Zone 1, suggests reevaluation of the potential effect of the project on both the king and Tanner crab resource in the area. I will do that.

The starting date of the project has been put off at least until August 9th. Before that date, I will consider all options for the project including the option of postponing the project until the 1988 fishery season and lowering the catch limits as you proposed in your letter. My assessment should be complete by August 7th. I will advise you of my decision immediately. Whatever my final decision, I assure you that I will rigorously examine the project and its conclusions as you requested.

I agree that we should try to avoid breakdown of cooperative efforts among the affected sectors of the fishery industry and thank you for raising your concerns in time for me to consider them before I make a final decision.

Sincerely,

William E. Evans, Ph.D.
Assistant Administrator
for Fisheries, NOAA



AUG 17 1987

PATTON, BOGGS & BLOW
2550 M STREET, N.W.
WASHINGTON, D. C. 20037
(202) 457-6000

TELECOMPER: 457-6316

ITT TELEX: 440324

TRT TELEX: 197780

JAMES R. PATTON, JR.
GEORGE BLOW
JOSEPH L. BRAND
THOMAS PALE BOGGS, JR.
TIMOTHY J. BAY
HARRY A. BIRMAN
ELLIOT K. COLE
J. GORDON ARBUCKLE
WILLIAM C. PORTER
DAVID C. TODD
RICHARD A. EARLE
ERNEST B. CHRISTIAN, JR.
ROBERT M. KOENIGER
DAVID B. ROBINSON
JOHN H. VOGL
ALLAN ABBOT TUTTLE
BART S. FISHER
JAMES G. O'HARA
JOHN L. OBERKOPFER
LANNY J. DAVIS
DOMENICO DE SOLE
TIMOTHY A. MANCIERVA, JR.
JOHN F. WOODS

TIMOTHY A. CHORBA
RONALD H. BROWN
MOOLETON A. MARTIN
GARRET B. RASKUSSEN
JAMES B. CHRISTIAN, JR.
DAVID E. DUNN
RONALD B. LIEBMAN
J. KIRK WADE
STUART M. PAPE
JOE ROBERT REEDER
STEVEN M. SCHNEEBALM
CLIFF WASSER II
SHAOLU ARLAN
DONALD V. MOOREHEAD
FRANK R. SAMOLIS
FRANK J. DONATELLI
DON A. ALLEN
DUANE A. TILER
RICHARD M. STOLBACH
KATHARINE R. BOYCE
GEORGE M. BORABASY
JEFFREY T. SMITH
GEORGE J. SCHUTZER
THOMAS H. CATALANO

SCOTT NASON STONE
MICHAEL D. EBCH
AMOREA S. NEWMAN
FLORENCE W. PROLEAU
RUSSELL V. RANDLE
JEAN V. MARSHARG
JEFFREY L. TURNER
CHARLES E. TALISHMAN
IRA A. FISHMAN
PAUL A. J. WILSON
ANDREA L. FISCHER
DEAN M. DALLEY
DEBORAH E. NEIPRIS
MARY CRAWFORD DOWNNE
CLAUDIA A. MCMURRAY
JONATHAN M. HALPERN
JOHN C. MARTIN

DEBORAH M. LODGE
MARY ELIZABETH BOBKO
JUDITH BARTHOFF
MITCHELL R. BERGER
PETER A. HUSSEBAUM
JUDITH W. BAGLEY
KATHLEEN M. WILLES
WILLIAM F. J. AARINGER
KENNETH L. GLAZER
PHILIP L. ROBINSON
ROSS E. EICHBERG
JUDITH BARRETT
MARK W. PORTER
DANIEL E. WALTZ
RACHEL A. SHUB
KEVIN B. OWYER

July 29, 1987

WRITERS DIRECT ORAL

Dr. William E. Evans
Assistant Administrator for Fisheries,
NOAA
Universal Building, South
1825 Connecticut Avenue, N.W.
Room 1011
Washington, D.C. 20235

Dear Bill:

On behalf of the Alaska Crab Coalition ("A.C.C."), I would like to thank you for your prompt consideration of serious concerns regarding a Bering Sea crab bycatch project, which is planned to commence on or about August 1. As always, your professionalism is deeply appreciated.

By a letter dated July 27, 1987, the Director, Northwest and Alaska Fisheries Center, provided to A.C.C. Director, Arni Thomson, a copy of a "Cruise Plan", dated July 15, 1987, for S-K Project No. NA-86-ABH-00042. The "Cruise Plan" confirmed the intentions of the S-K contract recipients to carry out intensive trawling activities in Zone 1 of the Bering Sea, where depressed crab resources had only recently been afforded a minimal degree of protection. The ostensible purpose is to test fishing gear which has been modified to reduce the impact of trawling on the crab resource.

By a further letter dated July 27, 1987, the Center Director approved the operations described in the "Cruise Plan", and established certain conditions for the project. The letter authorized a bycatch of 100,000 king crab and 120,000 Bairdi crab in Zone 1 specifically for the project. Quotas of 4,500 metric tons of yellowfin sole and 3,000 metric tons of "other flatfish" were established for the project (and the catch will be sold commercially in a joint venture with a Soviet processing vessel).

The record reflects that the North Pacific Fishery Management Council ("Council") had agreed upon, and NMFS had adopted, caps of 135,000 king crab and 80,000 Bairdi crab in Zone

OF COUNSEL
WILLIAM D. HATHAWAY
ALEXANDER M. LANGLER
PENELOPE S. FARTHING
THEODORE G. KROMMILLER
STEPHEN H. LACHTER
JOHN F. JONAS
JOHN S. WHITE
CARL T. ROWAN, JR.

*Not admitted in D.C.

PATTON, BOGGS & BLOW

Dr. William E. Evans
July 29, 1987
Page 2

1, for 1987. During the course of the commercial trawl fishery, 60,882 king crab and 96,244 Bairdi crab were taken as bycatch. There was no directed fishery for Bairdi in 1987, for reasons of conservation.

You can well imagine the reaction of A.C.C. to the "Cruise Plan" and letter of approval. Additional potential bycatch of 220,000 crabs in the project, over and above the bycatch already experienced this year, gives rise to very serious concerns. Such a radical departure from a Council decision which had reflected industry consensus is regarded by A.C.C. as wholly inappropriate and completely unacceptable. My own view is that the project violates not merely one, but several, Acts of Congress, and that immediate judicial intervention is warranted in fact and in law.

A.C.C. respects your personal judgment concerning certain scientific elements of the planned project. However, the strong belief remains that any results which are achieved will be of doubtful relevance to the commercial trawl fishery. A.C.C. points to the fact that the crab resource is not in the same condition at this time of year as during the period when commercial trawling is permitted. A.C.C. believes that, to be of value to the management of the trawl fishery, any bycatch project should be conducted during the commercial fishing season. In principle, any such project should not result in bycatch levels exceeding the caps decided upon by the Council.

Moreover, it is the stated intention of the project managers to target their yellowfin sole and other flatfish operations on areas having high concentrations of crab, rather than to employ a fishing strategy which minimizes the crab bycatch as is the normal practice in the fishery. It seems obvious that the experimental gear and the control gear should be employed in a fishing plan which avoids crab as much as possible, and thereby approximates the normal commercial trawl fishing strategy. Only by that means may a comparative analysis of the two gear configurations be realistically applied to the commercial fishery.

Notwithstanding the identified scientific objectives of the project, A.C.C. regards it as an essentially commercial venture calculated by the industry participants to evade and defeat the prevailing bycatch limits and extend the bottomfish fishing season. You are no doubt aware of the fact that trawl bycatch

PATTON, BOGGS & BLOW

Dr. William E. Evans
July 29, 1987
Page 3

restrictions were established following lengthy debate among the affected sectors of the fishing industry and among members of the Council. This process attracted intense congressional interest. A.C.C. wishes to emphasize that these limits were adopted by the Council based on conservation requirements and industry consensus. A.C.C. understands that the yellowfin sole fishery was limited for conservation reasons related to the target stocks, as well.

The commercial sale of the yellowfin sole catch in a profit-making joint venture, coupled with what is, in effect, a subsidy by the Federal Government through Saltonstall-Kennedy funding, raises very serious legal and policy issues. I should add that the absence of an environmental assessment or environmental impact statement on the project is a cause for further legal concern. Furthermore, the administrative record does not support the project.

Of most critical importance, however, is the fact that bycatch restrictions on Bairdi have already been very greatly exceeded this year, and the bycatch project permits massive additional crab mortality. (We note that actual mortality is anywhere between 1.5 and 20 times the observed bycatch, due to crushing of crabs under the trawl gear.) For those in the industry who have worked hard to develop acceptable bycatch limits, and have foregone a directed Bairdi crab fishery in order to contribute to the rebuilding of the stocks, this additional bycatch and unobserved mortality in the yellowfin sole trawl fishery is extremely disturbing. Members of the Council who have struggled to balance competing interests in conservation and development cannot but be concerned about the implications of the decision by your agency to authorize radically increased bycatches. Further targeting on yellowfin sole plainly raises additional conservation issues.

Protestations of certain persons to the contrary notwithstanding, A.C.C. was not consulted in any meaningful way during the formulation of the project. A.C.C. most certainly was not apprised specifically of the intention to establish large commercial quotas of yellowfin sole and "other flatfish" for operations in sensitive crab habitat areas following the close of the season. Apparently, the industry managers of the project were not genuinely interested in working with A.C.C., because of objections to the S-K project which had been voiced on behalf of the crab fishermen prior to the end of last year. Plainly, the

PATTON, BOGGS & BLOW

Dr. William E. Evans
July 29, 1987
Page 4

events of the past several days have vindicated A.C.C.'s early criticism of the project.

A.C.C. believes that it would be incumbent upon NMFS to take immediate steps to ensure that the project does not lead to a breakdown of cooperative efforts among the affected sectors of the industry, to a frustration of the management decisions of the Council, to a disregard for conservation objectives, to a lack of confidence in scientific work performed under the auspices of NMFS and with federal funding, and to costly litigation and adverse political reaction. A.C.C. recommends that these steps include: (1) a decision by your agency to reduce the authorized bycatch for the project to levels of 6,000 king crab and 9,750 Bairdi crab, and count against next year's bycatch caps the crab bycatch that actually results from the project, and (2) a commitment by you to rigorous critical examination of the project and its conclusions.

The first recommendation is calculated to restore the confidence of crab fishermen, Council members, and Members of Congress in cooperative industry efforts and in fishery management. The recommended bycatch levels reflect the normal bycatch rates as they would be applied to the project's quotas of yellowfin sole and other flatfish (.8 king crab/1 metric ton yellowfin sole and 1.3 Bairdi crab/1 metric ton yellowfin sole). Certainly, higher bycatch limits cannot be justified, in light of the fact that the trawl gear being tested is designed to reduce the bycatch rates. If the bycatch from the experimental gear in fact exceeds normal rates, the project should terminate, because the modifications to the gear have failed their purpose. The Center Director indicates the statistical need for 250 tows. Even at 30 metric tons per tow (which is at least twice what is normally experienced), 250 tows will be achieved if the bycatch rate does not exceed what is usual. More likely, at least 500 tows will be possible under the recommended formula and, in fact, the thirty-day project cannot practicably accomplish more than that number (6 hrs./1 tow x 4 trawlers x 30 days = 480 tows).

We urge that the normal fishing strategy of avoiding high concentrations of crab be employed, so that the results of the project can usefully be compared to the normal commercial fishery. If the MANTA component of the project requires trawling in high crab density areas, this should have relatively little impact on the overall project, as the video gear will be utilized

PATTON, BOGGS & BLOW

Dr. William E. Evans
July 29, 1987
Page 5

only for a very short period during the project.

We request, as well, that observers be placed on board every catcher boat, not merely on one as currently planned. This, too, would improve confidence in the project, as there is a history of reported dumping of tows containing large quantities of crab.

The second recommendation is intended to ensure that both the project and the scientific objectives of the agency find credibility with interested sectors of the industry, as well as with the Council and the Congress. The importance of this point cannot be too greatly emphasized.

A.C.C. looks to you, Bill, for leadership in resolving what otherwise must become a highly contentious and destructive issue. On behalf of A.C.C., I express the sincere hope that the foregoing recommendations will be adopted. I look forward to hearing from you at your earliest convenience.

With best personal regards.

Sincerely,



Theodore G. Kronmiller

TGK:bw

Enclosure

AUG 17 1987

PATTON, BOGGS & BLOW
2550 M STREET, N.W.
WASHINGTON, D.C. 20037-1350
(202) 457-6000

TELECOPIER: 457-8316

ITT TELEX: 440324

TRT TELEX: 197780

BALTIMORE OFFICE
250 WEST PRATT STREET
BALTIMORE, MARYLAND 21201
(301) 659-5600

August 14, 1987

JAMES R. PATTON, JR.
GEORGE BLOW
JOSEPH L. BRAND
THOMAS MALE BOGGS, JR.
TIMOTHY J. MAY
HARRY A. INMAN
ELLIOT H. COLE
J. GORDON ARBUCKLE
WILLIAM C. FOSTER
DAVID C. TOOD
RICHARD A. EARLE
ERNEST S. CHRISTIAN, JR.
ROBERT H. KOEHLER
DAVID B. ROBINSON
JOHN H. VOGEL
ALLAN ABBOT TUTTLE
BART S. FISHER
JAMES G. O'HARA
JOHN L. OBERDORFER
LANNY J. DAVIS
DOMENICO DE SOLE
TIMOTHY A. VANDERVER, JR.
JOHN F. WOODS
TIMOTHY A. CHORBA
RONALD H. BROWN

MIDDLETON A. MARTIN
GARRET G. RASMUSSEN
JAMES B. CHRISTIAN, JR.
DAVID E. DURN
RONALD S. LIEBMAN
J. KIRK WADE
STUART M. PAPE
JOE ROBERT REEDER
STEVEN M. SCHNEEBBAUM
CLIFF MASSA III
SHAOUL ASLAN
DONALD V. MOOREHEAD
FRANK R. SAMOLIS
DON A. ALLEN
DUANE A. SILER
RICHARD M. STOLBACH
KATHARINE R. BOYCE
GEORGE M. BORABABY
JEFFREY T. SMITH
GEORGE J. SCHUTZER
THOMAS H. CATALANO
SCOTT NASON STONE
THEODORE G. KRONMILLER
HARRY R. HUGHES*
JOHN A. MOAG, JR.*

MICHAEL D. ESCH
ANDREW S. NEWMAN
FLORENCE W. PRICLEAU
RUSSELL V. RANDLE
JEAN V. MACHARG
JEFFREY L. TURNER
CHARLES E. TALISMAN
IRA A. FISHMAN
PAUL A. J. WILSON
DEAN M. DILLEY
DEBORAH F. NEIPRIS
MARY CRAWFORD DOWNIE
JONATHAN N. HALPERN
JOHN C. MARTIN
DEBORAH M. LODGE
MARY ELIZABETH BOSCO
JUDITH BARTHOFF

MITCHELL R. BERGER
PETER A. NUSSBAUM
JUDITH W. BAGLEY*
KATHLEEN M. NILLES
WILLIAM F. J. ARDINGER
KENNETH L. GLAZER*
PHILLIP L. ROBINSON*
ROSS E. EICHBERG*
JUDITH BARNETT*
DANIEL E. WALTZ*
RACHEL A. SHUB
JAMES R. STUART, III*
KEVIN B. DWYER
SUSAN J. HACKETT*
STEVEN D. FARKAS
CRAIG V. WITCHER*
JOSEPH S. MAHALEY

OF COUNSEL

WILLIAM D. HATHAWAY
ALEXANDER M. LANKLER
PENELOPE S. FARTHING
STEPHEN H. LACHTER
JOHN F. JONAS
JOHN S. WHITE
JOSEPH A. KLAUSNER*

*Not admitted in D.C.
*Admitted in Maryland only

WRITERS DIRECT DIAL

Commissioner Don Collinsworth
Department of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802

Dear Don:

I would like to thank you for your prompt and effective response to serious problems generated by the S-K funded bycatch project in the Bering Sea this month. The addition of ADF&G observers to the project will provide a level of confidence which otherwise would be absent.

I have concluded that this project is not only illegal, but also subversive of the Council process and Alaska State fisheries management objectives. It is perfectly clear to me that this project is nothing more or less than an attempt to evade bycatch limits established by the Council, by permitting a second commercial fishery for yellowfin sole and other flatfish for 1987, with additional bycatches of king crab and Bairdi tanner crab. Furthermore, it is clear that the project is aimed at undercutting the conservation ethic adopted and implemented with demonstrative positive effects by the Council and the State.

I am enclosing a copy of my letter to Bill Evans criticizing the project. Although I am not enclosing the draft Complaint and associated legal documents, I would like you to know that, had this project not been substantially modified, A.C.C. would have proceeded with litigation and, I can assure you, would have prevailed against the agency with very little difficulty. The National Environmental Policy Act, the Saltonstall-Kennedy Act, and the Magnuson Fishery Conservation and Management Act, were flagrantly violated by NMFS in its efforts to engineer this bogus "research" project.

You can expect that A.C.C. will bring to the attention of the Council the details of this enterprise. Documents obtained through a Freedom of Information Act request show a callous

disregard by the agency for laws and policies which are aimed at the rational and fair management of our fisheries. Even in the absence of a lawsuit, I expect the consequences to be far-reaching.

In closing, I would just like to remark that Bill Evans has personally played a positive role in modifying the project. Although I am not fully satisfied with the outcome, I do believe that Bill demonstrated good faith in trying to manage what was a very bad initial judgment call by his subordinates.

Again, thank you for your cooperation and prompt response.

Sincerely,

Ted, bw

Theodore G. Kronmiller

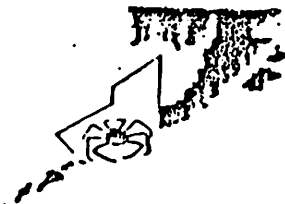
TGK:bw

Enclosure

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Arni Thomson ✓

Alaska Crab Coalition (A.C.C.)

(206) 547-7560
3901 Leary Way (Bldg.) N.W.,
Suite #6
Seattle, WA 98107
FAX (206) 547-0130



July 31, 1987

Mr. Bob McVey
Director
NMFS, Alaska Region
P.O. Box 1668
Juneau, Alaska 99802

Dear Bob:

Prompted by the Highliners recent letters of June 26th and July 7th about myself and the A.C.C., I am writing to clarify the A.C.C.'s position relative to the S-K Bycatch Project. My remarks are intended to be part of the administrative record. The chronology of circumstances under which the correspondence arrived are of interest and represent an insincere and de facto attempt to involve the A.C.C. as an industry sponsor in a project design submitted over one year ago, on May 25, 1986, to the Fisheries Development Division of NMFS. If the Highliners really wanted to involve the A.C.C. in the project, they would have formally invited A.C.C. to participate during the initial planning stages, not after the fact.

I appreciate your having informed the Alaska Crab Coalition about the plans that the Highliners Association, in cooperation with the Northwest Alaska Fisheries Center, have for the simulated at sea commercial trials aspect of their S-K funded bycatch project. Your telephone call to this office was the first time that someone has informed the office of the detailed plans to reenter Zone 1 to conduct a bycatch research project relative to yellowfin sole trawling.

Until the past several days, I was unfamiliar with the full details of the project, other than what I gleaned from two cover pages of the original application. I was certainly unaware of the levels of bycatch that were contemplated. As I told you on the telephone, this was forwarded to us by our legal counsel in Washington, D.C. just prior to Pacific Marine Expo, in Seattle, the week of November 21, 1986.

At the time our attorney informed us of the Highliners Association being awarded \$325,723 for bycatch study, he also advised us to prepare a statement of objection to the NPFMC based on the apparent conflict of interest on the part of the industry participants involved in the project, as the results would be

used in the ongoing negotiations to modify flounder trawling restrictions in the Eastern Bering Sea.

We did not do this at the time, however, the A.C.C. Directors authorized me to express our objections to the project at the Pacific Marine Expo "Bycatch and Gear Selection Seminar" held on November 21, 1986. Over a dozen A.C.C. members attended the Bycatch Forum. Since the Forum was a funded part of the S-K Project, and audience participation and questions were invited, we felt this an appropriate place to air our objections (see enclosures: S-K Project Summary, Phase II, and Pacific Marine Expo correspondence).

The Highliners' letter makes reference to Steve Hughes' telephone conversations to Poulsen and Peterson as representing their sincerity and stated intention to have A.C.C. participate. For the record, these calls were made to the Board members at their places of business. No information was passed to myself, the A.C.C. Director, other than mention of the contacts and there was no Board of Directors meeting to discuss the issue until July 8th.

The first piece of correspondence on the matter, is addressed to Poulsen on June 3rd at his business address (enclosure). No response was made to it, as Poulsen left the following day and was out of the country for a month. I was not shown the letter until July 8th at the Board Meeting. As can be seen, the letter is extremely brief and contains no information about the project design, planning, etc.

The first descriptive letter about the project design was sent to the A.C.C. office on June 26th and delivered to the office on June 29th (enclosure). It was also addressed to Poulsen who was still out of the country. On June 25th, Hughes' secretary called the A.C.C. and inquired "if Poulsen worked there" as she needed to send him a letter. I told her this was not his place of business and that he was unavailable. I then advised her to tell Hughes that if the correspondence was in regard to bycatch, to kindly address it to the A.C.C. office as is the customary procedure for associations. That was the first letter on the matter addressed to the A.C.C., although it arrived in an NRC envelope, but was written on Highliners stationery. It, too, was addressed to Kris Poulsen. Since Poulsen was scheduled to return on July 3rd, I left the letter unopened.

On June 30th, the day after the letter arrived, Bob, you called and acknowledged your receipt of the letter in Juneau. As you recall, I stated my lack of awareness of the letter's contents, the schedule and technical details about the S-K project. It was at this time you informed me of the Zone 1 experiment to commence on August 1, which was apparently decided in a lengthy planning session the week of June 11th. In response

to your inquiry, I stated the project might have some merit, but that it would have to be analyzed by the Board. Again, I had no idea of the bycatch levels foreseen for the project. The Board of Directors had never discussed the matter and position statements would have to await a Board meeting scheduled for the week of July 8th.

The A.C.C. finds it ironic, but clever, that the same group which is managing the bycatch project on federal funds, initiated the yellowfin sole fishery seven years ago as an S-K funded fisheries development project in the Bristol Bay pot sanctuary zone (enclosure). ("The Joint Venture Fishery for Yellowfin Sole," The Bering Sea, Summer 1980; Captain Barry Fisher).

The year 1985 marked the record year for "observed" bycatch of red king crab in the yellowfin sole fishery. The bycatch exceeded 1 million animals, with possibly another 10-15 million animals crushed or maimed that did not come up in the gear (ADF & G Advisory Paper, 18 Oct. 1985). This activity resulted in the formation of the A.C.C. to redress the problem by forming a political action group to mount an effort within the NPFMC.

Much of the controversy formed over the entrance of one association into the fishery in 1985, namely the Midwater Trawlers Cooperative, led by Barry Fisher and NRC partner and MTC Technical Advisor, Steve Hughes. In a letter addressed to the NPFMC on December 18, 1984, Hughes introduced the MTC and announced their intentions to significantly expand the yellowfin sole fishery in the Bering Sea. In 1985 the fishery expanded to 117,000 metric tons. (enclosure).

With the same people involved in the Highliners Bycatch project and in addition, Gary Lovrich of Northeastern Trawl Systems (net builder for the j/v fleet) being involved as a technical consultant, we see a distinct problem with objectivity and an obvious bias. From a cost-benefit perspective, the project managers are benefiting from the bycatch of crab at the expense of A.C.C. members directed crab fisheries.

The political realities of the S-K Bycatch Project make it almost impossible for the A.C.C. to participate financially with the Highliners. Particularly, as the project is presently focused to conduct an experimental fishery in Zone 1, commencing on August 1st. If this is to be a simulation of the impacts of the commercial fishery, does that mean the yellowfin sole fishery will not be conducted in this area until August 1 in 1988? If so, then this assessment might contain a measure of validity. However, if the fishery is to be conducted during the months of March and April, as in previous years, the molting period for king crab, the simulation experiment will be invalid as the crab are hard shelled in August.

Our further views on this matter are reflected in a letter from Ted Kronmiller to Bill Evans. That is enclosed.

We trust that the record is now straight.

Sincerely,

Arni Thomson
Executive Director

Enclosures

cc: Dr. William E. Evans, Asst. Admin. Fisheries, NOAA
Jim Brennan, Deputy General Counsel, NOAA
Jim Branson, Executive Director, NPFMC
Don Collinsworth, Commissioner, ADF & G
Joe Blum, Director, WDF
Bill Aron, Director, NAFC, NMFS
Ken Parker, Director, Commcl. Fisheries, ADF & G
Larry Nicholson, Director, Westward Region, ADF & G
Larry Cotter, NPFMC
Bob Alverson, Manager, FVOA



RECEIVED
AUG 5 1986

OFFICE OF THE ADMINISTRATOR

ROUTE TO

INITIAL

July 1, 1986

Exec. Dir.	
Deputy Dir.	
Admin. Off.	
Exec. Sec.	
Chief Asst. 1	
Chief Asst. 2	
Chief Asst. 3	
Chief Asst. 4	
Chief Asst. 5	
Chief Asst. 6	
Chief Asst. 7	
Chief Asst. 8	
Chief Asst. 9	
Chief Asst. 10	
Chief Asst. 11	
Chief Asst. 12	
Chief Asst. 13	
Chief Asst. 14	
Chief Asst. 15	
Chief Asst. 16	
Chief Asst. 17	
Chief Asst. 18	
Chief Asst. 19	
Chief Asst. 20	

MEMORANDUM FOR: Daniel W. McGovern
General Counsel

FROM: Jay S. Johnson *Jsj CM*
Assistant General Counsel
for Fisheries

SUBJECT: Funding of Fisheries Research

ISSUE: Can NOAA enter into cooperative fisheries research arrangements with private parties that will allow the sale of fish to offset the cost of such research?

CONCLUSION: Yes. NOAA has sufficient statutory authority to enter into such agreements provided that title to any fish not retained for research purposes remains with the private party. However, as a policy matter, any fisheries research that would involve the sale of fish taken outside the prevailing regulatory structure should be conducted in a manner which would avoid the appearance of impropriety.

DISCUSSION: Senator Ted Stevens has requested a review of NOAA's ability to allow the sale of fish caught by private vessels conducting resource assessment under contract for the agency. The Senator enclosed two letters that referred to a legal opinion of the NOAA Northwest Regional Counsel that placed certain restrictions on such activities. One of the letters came from a NOAA fisheries research biologist seeking new legislation to exempt vessels under agency contract from existing fishery regulations and to establish a revolving fund by which the proceeds from sale of fish could be used by the agency to fund research programs.

The other letter came from the owners of the F/V PROWLER who proposed to replace a Japanese longline vessel that has conducted sablefish and Pacific cod surveys in the Bering Sea and the Gulf of Alaska. The Japanese surveys were conducted at no expense to the agency but at times when commercial fishing was not allowed. The Japanese vessel is said to have sold its catch for upwards of \$1 million. Understandably, the F/V PROWLER's owners desire a similar opportunity.

NO EXPENSE
NOAA



The Regional Counsel's opinion was drafted in response to a draft contract solicitation for services of a privately-owned fishing vessel to conduct a 45-day groundfish assessment survey in the Aleutian Islands. The draft solicitation would have allowed the vessel owner to sell that part of the catch not needed for scientific studies to reduce the costs of the survey. The opinion concluded, correctly in my judgment, that it would improperly augment NOAA's appropriations if the fish were sold to defray NOAA's payment obligations under the contract. Since catching the fish would have been a contract requirement, the fish would become government property. An agency generally cannot sell government property to perform functions for which it has received appropriations. See 16 Comp. Gen. 241 (1936). This same principle would apply to sale of fish caught by NOAA's own research vessels.

The opinion suggested an alternative contract form that would avoid the augmentation issue. By contracting for specific vessel services -- e.g., samples of fish taken under specified conditions, room and board for agency scientists, etc. -- the private vessel would retain title to the fish. In this manner NOAA appropriations would bear only the cost of its scientific personnel and the negotiated cost of having the vessel crew do any extra work needed for scientific reasons.

Subsequent to that advice, my office has identified several additional authorities that may be used in cases to further expand the Secretary's authority without implicating augmentation of appropriations problem. Under 15 U.S.C. §1522, the Department of Commerce is authorized to accept gifts and donations "aiding or facilitating the work of the Department." Under 16 U.S.C. §742f(c), the Secretary of Commerce is authorized to "recruit, train and accept the services of individuals without compensation as volunteers for [NOAA programs]." Additionally, under 15 U.S.C. §1525, the Secretary is authorized "upon the request of any person . . . to make special studies on matters within the authority of the Department." Two other authorities permit the Secretary to enter into cooperative cost-sharing arrangements with states, colleges, research and non-profit organizations on matters of mutual benefit or specifically related to fish and wildlife. See 15 U.S.C. §1525 (2d ¶) and 16 U.S.C. 753(a).

While the above statutory provisions each have slight nuances that may affect the terms of particular relationships, they clearly represent significant authorities. For example, a fisherman could donate the services of his vessel or volunteer the services of his crew to NOAA for research purposes. Alternatively, a fisherman could request a NOAA scientist to accompany his vessel on a cost reimbursable basis. If a research institute, state, college, or non-profit organization

were involved, a variety of cost sharing arrangements also would be available.

Each of these alternatives, however, raises a completely separate question if the vessel must fish at times or places or for certain species prohibited by current fishery management regulations. If contract research survey work were conducted by a vessel from a recognized scientific institute or a university, the Magnuson Act's exemption of "scientific research activity conducted by a scientific research vessel" would apply. See 16 U.S.C. §1802(10). It is less certain that a commercial fishing vessel that intends to sell its catch can fit within this exemption simply by contracting with NOAA or another research institute or by offering to donate its services to the agency.

Although the Japanese fishing vessel that previously performed the sablefish assessment was considered to fit the scientific research exception, this was by specific provision in the foreign fishing regulations that allows foreign vessels to use commercial gear and take fish in commercial quantities, even when otherwise prohibited, when "carried out in full cooperation with the United States" and authorized by a NOAA/NMFS research center director. 50 CFR §611.14.

To provide a similar opportunity for domestic vessels, the Regional Counsel's opinion suggested that existing fishery management regulations be amended to exempt private commercial fishing vessels from regulations when appropriate. I agree with that recommendation. Some fishery regulations already provide such authority. For example, the Atlantic swordfish regulations state that "the Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations." 50 CFR §630.24. Similar provisions exist in other Gulf of Mexico, South Atlantic and Caribbean fishery management regulations. A more detailed example is the experimental fishing provision contained in the Pacific groundfish regulations at 50 CFR §663.10.

To this advice, I will also add some further words of caution. Allowing a commercial fishing vessel to take and sell fish outside the existing regulatory structure holds a high potential for public misunderstanding and abuse. If such cooperative arrangements are adopted on a wide scale without adequate internal safeguards, the agency could be subject to criticism that "insiders" are being favored with agency contracts or other commercially advantageous relationships.

RECOMMENDATIONS:

1. Advise Senator Stevens that there is no need for new statutory authority to allow private vessels operating under agency contract to sell their catch.
2. Request the Regional Councils that have not already done so to consider changes to FMPs that would allow the Secretary to exempt from fishery management regulations those vessels that will be cooperatively assisting the agency's research program.
3. Develop an agency policy statement to prevent this opportunity to expand the agency's research program from being abused and embroiling the agency in selections which might involve the appearance of conflict of interest.

Attachment

cc: GC - Regional Attorneys
F - William Gordon
F/M - Carmen Blondin
F/S - Joseph Angelovic

MEMORANDUM

TO: Council, AP and SSC Members

FROM: Jim H. Branson *JMB*
Executive Director

DATE: June 19, 1986

SUBJECT: Funding of Commercial Research Charters

ACTION REQUIRED

Information only.

BACKGROUND

Council staff and NOAA General Counsel/Alaska have been researching the question of whether harvest proceeds may be used to support research charters by U.S. fishing vessels. Given the likelihood that current foreign research cruises may soon be terminated and the fact that federal fishery research monies have been reduced, the Council must search for alternative methods to fund needed fisheries research. Sale of catch by private domestic commercial vessel under a research contract may be one of those methods. Attachment A is a memorandum from General Counsel/Northwest on this issue. Pat Travers, General Counsel/Alaska, will brief the Council on this matter in Kodiak.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel, GCNW
7600 Sand Point Way N.E., BIN C15700
Seattle, Washington 98115
(206) 526-6075; FTS 392-6075

March 7, 1986

MEMORANDUM FOR: F/NWC - Ben F. Jones *W*
FROM: GCNW - Douglas M. Ancona *MHB*
GCNW - Michael H. Bancroft
SUBJECT: Sale of Catch by "Contract" Research Vessels

REF: Draft Solicitation No. WASC-86-00086

BACKGROUND

The Resource Assessment and Conservation Engineering Division of the Northwest and Alaska Fisheries Center (NWAFC) has requisitioned the chartering of two private commercial trawlers for a groundfish resource assessment in the Aleutian Islands for 45 days in the period May 1 - August 15, 1986. The WASC Procurement Division has submitted a draft solicitation, No. WASC-86-00086, to GCNW for legal review. The proposed charter provides that the contractor (vessel owner) may keep the catch (except prohibited species) remaining after the scientific evaluation and retention of samples by the NOAA scientific party. The contractor could then sell this residual catch to defray a part of the survey costs. This arrangement is intended to lower the cost of the charters to NOAA, and is a departure from past WASC vessel charters, in which the residual catch was dumped at sea.

In discussions with NWAFC concerning this contract, two other research charter ideas surfaced. In one, NWAFC proposes opening competition for the above charter contract to U.S. joint venture catcher vessels, which would sell and transfer their residual catch to a foreign processing vessel at sea. However, because foreign joint venture processors operating in the groundfish fishery in the Aleutian Islands are subject to small bycatch quotas on several species, NWAFC indicates that it would be desirable if the foreign processing vessels were exempted from the joint venture bycatch restrictions and allowed to keep the bycatch species. This would help make the joint venture option economically more attractive. Second, NWAFC believes the need may arise to employ the sale-of-catch device to conduct a charter sablefish assessment in the Gulf of Alaska which would involve longline fishing by domestic vessels during closed seasons and subsequent sale of the catch.



In discussions of the terms of the proposed contract, GCNW advised NWAFC and WASC that if the contractor's catch were harvested and disposed of consistent with applicable commercial fishing regulations, i.e., if the catch could be lawfully taken, retained, and sold absent the NOAA participation and research operation, then retention and sale of the catch by the contractor would be proper. In such a case, the contractor would be commercially fishing for itself and merely allowing for the onboard presence of the scientific party, NOAA's constraints on where to fish, and NOAA's evaluation and sampling of the catch. This approach would present no legal problem so long as the contract required adherence to the regulations imposed upon other vessels participating in the fishery such as obtaining a permit, discarding prohibited species, and observing quota closures.

★ NWAFC's two additional proposals pose the question of the propriety of NOAA's chartering a private vessel for scientific research under a contract which allows sale of fish by the contractor or other practices such as retention of bycatch species by foreign processing vessels, which sale or retention would be unlawful if done by vessels not operating under the contract. These proposals raise issues of both contract law and fisheries law and policy, which are particularly important due to the likelihood that they may become more prevalent in response to recent federal budget deficit reduction legislation.

DISCUSSION

A. AUGMENTATION OF APPROPRIATIONS - THE CONTRACT LAW PROBLEM

Under the "augmentation of appropriations" doctrine, the Government may not use the proceeds of its statutorily mandated operations to finance those or other operations, unless such a revolving fund procedure is specifically authorized by statute. In general, operations must be paid for only by appropriated funds, and receipts must be deposited in the Treasury as miscellaneous receipts. 53 Comp. Gen. 872 (1974); 35 Comp. Gen. 113 (1955); 31 U.S.C. § 3302(b). Similarly prohibited is the exchange of Government property for other property or Government needs. 27 Comp. Gen. 117 (1947); 16 Comp. Gen. 241 (1936); 40 U.S.C. § 485(a).

★ The augmentation rule would be violated if under the terms of the contract, the contractor conducts research for and under the direction of NOAA for a contract price plus the proceeds of the catch. In such a case the catch would be government property and its transfer to the contractor in partial compensation for services rendered would violate the augmentation rule because the catch represents something of value the proceeds of which must be

deposited in miscellaneous receipts. ^{1/} If, on the other hand, the contract provides that the contractor's activities, including sale of the catch, are on his own behalf with NOAA paying under the contract (only with appropriated funds) for fishing services, access to the vessel, use of part of the catch for research purposes, and room and board, the augmentation doctrine would not be violated as no money or property other than appropriated funds will have changed hands. Under such a "mutually beneficial arrangement," there would be no augmentation. 63 Comp. Gen. 459, 461 (1984). However, in either case, the contracted activity must fall within the scope of the scientific research exception contained in the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. §§ 1801, 1802(10), as discussed below. This status is necessary to exempt the contract vessel from regulations which would otherwise apply to commercial vessels operating in the fishery. This has not been a problem in prior research contracts because the contractor's activities were non-commercial (e.g., the catch could not be sold) and did not violate regulations applicable to other commercial vessels participating in the fishery.

**B. THE MAGNUSON ACT SCIENTIFIC RESEARCH
EXCEPTION - THE FISHERIES LAW PROBLEM**

For purposes of the Magnuson Act:

(10) The term "fishing" means --

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, and activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

16 U.S.C. § 1802(10) (emphasis added).

^{1/} Former NWAFRC contracts with private vessel owners provided that fish harvested under the contract became the property of the United States. If subsequent sale of the fish by the contractor had been allowed, the augmentation rule would have been violated.

Even if the proposals under consideration survive the augmentation prohibition, they must also fall within the scientific research exception to the Magnuson Act in order to be exempt from federal regulations generally applicable to all other United States vessels participating in the fishery unless the federal fishery management plan covering the fishery provides some special exemption from regulations for commercial fishing vessels which would allow the conduct of privately conducted, carefully controlled "experimental" fishing otherwise prohibited by the regulations. See, e.g., 50 C.F.R. § 663.10 (regulations implementing the Pacific Coast Groundfish Fishery Management Plan).

NOT INCLUDED?

The subject of private vessels on contract to NOAA as scientific research vessels was alluded to in the Administrator's concurrence in the General Counsel's memorandum on Scientific Research Fishing, dated December 17, 1985 (copy attached). This memorandum followed the bringing of enforcement cases against NOAA scientists and a private contractor for retention of prohibited species (salmon) for personal consumption during and after a "research" cruise. The contractor was fined and paid a monetary penalty; the scientists received written warnings and letters of reprimand. Future treatment of such breaches of regulations and NWAFC policy was addressed by a series of options presented in the memorandum. Option 2 of the memorandum, which was not adopted, would have denied contract vessels the status of "scientific research vessels" by regulatory clarification. Consideration of such a prescriptive regulation should not be read to imply that without it, contract vessels can or should be categorized as scientific research vessels. To our knowledge, no legal research has ever been done to support such a conclusion. Furthermore, the memorandum does not suggest that contract vessels by the terms of their contracts can or should be exempted from otherwise applicable regulations.

The primary legal question which remains unanswered is whether a United States commercial fishing vessel operating in a fishery covered by a fishery management plan, which vessel is under contract to catch fish to be used for scientific experiments, is engaged in "fishing" as that term is defined by the Magnuson Act when the vessel sells or otherwise disposes of the catch and retains the proceeds and when the harvest is inconsistent with regulations applicable to commercial fishing vessels participating in the fishery. ^{2/} The answer to this question raises a number of legal and policy considerations:

2/ Under certain conditions, existing NMFS policy in the Northwest and Southwest regions might construe such activity to qualify as "scientific research." See, memo Kruse to Aron, Barrett, Fullerton, dated 12/07/84, with attachment (copy attached).

TACHED

1. If contract vessels qualify as scientific research vessels, what are the dangers of abuse of the research exception by mixing research with the contractor's quasi-commercial activities and sale;
2. Is there an apparent conflict of interest between NMFS' research program and the contractor's interest in the size, composition, and value of the catch;
3. Are potentially unacceptable enforcement problems created by introducing into the marketplace research catch which would not be legal, but for the contract vessel research exception;
4. Whether contract vessel access to a fishery for research purposes is a form of limited entry to a fishery, the right of access to which is granted to the lowest bidder(s); and
5. Whether there is or should be a biological concern over not counting the catch against applicable quotas.

CONCLUSION

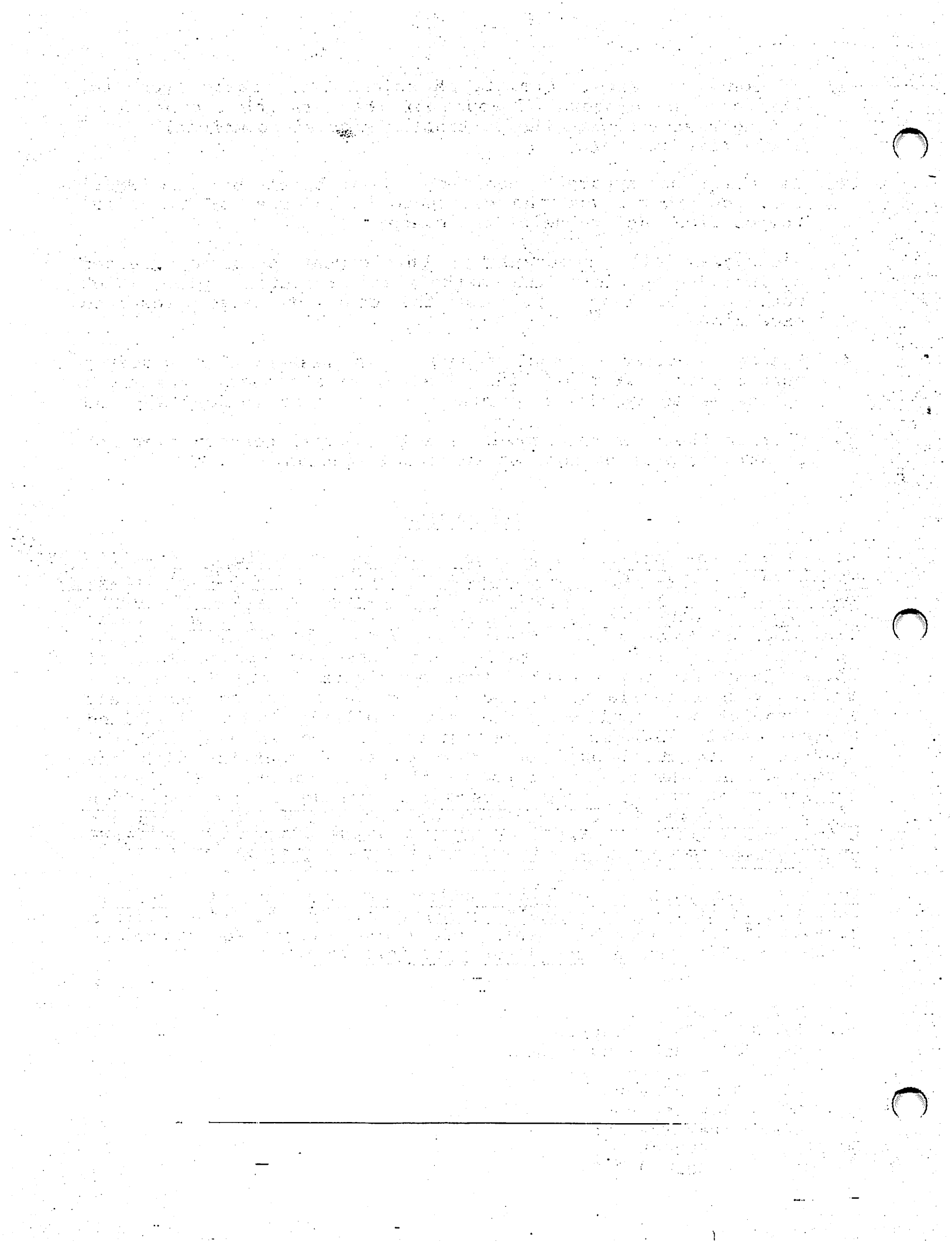
We believe the primary legal question is of national significance and is inappropriate to address solely on a regional basis. Accordingly, at your request we are prepared to refer the question to the NOAA General Counsel for prompt resolution. Until the scope of application of the research exception of the Magnuson Act is defined, solicitation and subsequent procurement of "scientific" fishing services from a private United States contractor vessel should be discouraged unless conducted consistent with regulations applicable to all similarly situated United States vessels engaged in commercial fishing in the fishery. Contract documents should be drawn to avoid conflict with the augmentation rule as indicated in this memorandum. Similarly, foreign joint venture processors participating in the operation cannot be excused by the contract document from regulations and permit restrictions applicable in the fishery unless and until such regulations or permit restrictions are modified.

UNRESOLVED

You may also wish to consider addressing the subject from the perspective of "experimental" fishing rather than "scientific research." Experimental fishing provisions of the Pacific Coast Groundfish Plan are attached for your information.

Att.: As noted.
cc: F/NWC2 - Gary Stauffer
RAS/WC3 - Bob Henderson
DOC/AGC - Jerry Walz
GC - Dan McGovern
GCF - Jay Johnson
GCAK - Pat Travers

GC File Nos. 502-05.7
502-10.2(2)





Northwest Region
7600 Sand Point Way NE
BIN C15700, Bldg. 1
Seattle, Washington 98115

DEC 7 1984 F/NWR3:1501-20-010 rja

TO: F/NWC - William Aron
F/SWC - I. Barrett
F/SWR - E. C. Fullerton

FROM: F/NWR - T. E. Kruse

SUBJECT: Criteria for Defining Scientific Research

We have finalized the subject criteria after incorporating the comments received in response to our August 2, 1984 memo to you, same subject. A copy of the final criteria is attached.

We intend to notify the Pacific Council that we will be referring to these criteria when evaluating proposals for experimental fishing or issuing acknowledgments of domestic scientific research under the Pacific Coast Groundfish or Salmon FMP's.

We appreciate your cooperation and assistance.

Harvey M. Hutchings
T. E. Kruse

Attachment

- cc: F/1
- F/11
- F/12
- GCF
- F/S
- F/S1
- GCNW
- U.S. Coast Guard
- PFMC

DEC 10 1984



CRITERIA FOR DEFINING SCIENTIFIC RESEARCH

The provision in the Magnuson Act which excludes scientific research from the definition of "fishing" covered by the Act contemplates activities that may result in or require the harvest of fish for scientific research purposes. Criteria to identify activities which qualify as scientific research under the exclusion include:

1. Scientific research which includes fishing must have as its primary objective, purpose or product the acquisition of data, information or knowledge. To determine whether an activity meets this first criterion, each scientific research proposal must be submitted in writing and demonstrate that:
 - a. The problem is researchable and will result in new information.
 - b. Application of existing knowledge alone is not sufficient to solve the problem.
 - c. Facts/data/samples will be collected, and analyzed in a scientifically acceptable manner and the results formally prepared and distributed.
 - d. Recognized scientific experts, organizations, or institutions with expertise in the field or subject matter area are sponsoring or are otherwise affiliated with the research.
 - e. Peer review of data, analyses, and conclusions will be involved.
- ★ 2. Any fish taken under such scientific research exclusion may be sold only to offset the actual cost of such research but no financial profits will accrue from the fish harvested under the proposal. Before fish taken under a scientific research exclusion may be sold to offset the cost of such research, it must be demonstrated that this income is secondary or incidental to the primary goal of acquiring data, information or knowledge to solve a problem.

experimental purposes, the direct or incidental harvest of groundfish managed by the Pacific Coast Groundfish Plan which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) **Application.** An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

- (1) The date of the application;
- (2) The applicant's name, mailing address, and telephone number;
- (3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;
- (4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;
- (5) For each vessel to be covered by the EFP:
 - (i) Vessel name;
 - (ii) Name, address, and telephone number of owner and master;
 - (iii) U.S. Coast Guard documentation, State license, or registration number;
 - (iv) Home port;
 - (v) Length of vessel;
 - (vi) Net tonnage; and
 - (vii) Gross tonnage.
- (6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;
- (7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and
- (8) The signature of the applicant.

The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(Approval by Office of Management and Budget not required, under 44 U.S.C. 3506 (c)(5)).

(c) **Issuance.**

- (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agencies of Oregon, Washington, California, and Idaho, accompanied by the following information:
 - (i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested;
 - (ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and
 - (iii) Biological information relevant to the proposal.
- (2) At a Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Pacific fishery

management agency. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the Pacific Coast Groundfish Plan; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the FEDERAL REGISTER describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the Pacific Coast Groundfish Plan.

(d) **Duration.** Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(e) **Alteration.** Any permit that has been altered, erased, or mutilated is invalid.

(f) **Transfer.** EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) **Inspection.** Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(h) **Sanctions.** Failure of the holder of an EFP to comply with the terms and conditions of an EFP, a notice issued under Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, shall be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by

EXPERIMENTAL GUIDELINES



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest and Alaska Fisheries Center
7600 Sand Point Way Northeast
BIN C15700, Building 4
Seattle, Washington 98115

AUG - 4 1987

F/NWC1:GS

MEMORANDUM FOR: F - William Evans
FROM: F/NWC - William Aron *WR*
SUBJECT: Decision Memo--S-K Bering Sea Crab Bycatch
Cooperative Research Experiment

I have reviewed the attached Environmental Assessment and research plan and the experimental design for the S-K crab bycatch project funded and prepared in cooperation with National Marine Fisheries Service. Based on my review of the proposed research, I find that there is no significant impact on the environment (FONSI). This research is designed to provide information to ameliorate the crab bycatch problem in the joint-venture and domestic trawl fisheries in the Bering Sea. In the July 17, 1987, information memo addressed to you and signed by McVey, Schmitt and me, we concluded that this research experiment was bonafide cooperative research. This conclusion was based on our evaluation that the proposal met our criteria for cooperative research developed by the Center and Region in 1984 (attached).

Studies to effectively reduce bycatch while still permitting the efficient utilization of the Bering Sea bottom fish stocks are a high priority in our region. The North Pacific Fishery Management Council is attempting to allocate the fishery resources of the north Pacific among users by closing geographic areas and setting bycatch limits based on information from past fishing experience. In addition, the trawl industry is attempting to reduce the bycatch and resulting impact of non-target species so that they may fully harvest their allocation. Research on gear development, selectivity, and potential impact on non-target species is critical to decision making by both the Council and the industry. As the king and bairdi crab stocks increase in abundance from the low levels of a year or two ago, it is likely that the crab bycatch issue will intensify and further constrain the utilization of the groundfish resources.



This S-K grant of \$325,723 was awarded to the Highliners Association effective September 26, 1986. The Assistant Administrator for Fisheries approved this proposal in September of 1986. A decision to postpone or cancel the project at this juncture, after substantial effort by industry, would jeopardize future cooperative research endeavors, waste the funds for expenses incurred to date, and result in loss of revenue by the industry participants. In addition, there have been expenditures and/or commitments of approximately \$105,000 in Federal funds and \$34,000 of industry matching funds which can not be recouped. Marine Resources Company has committed five catcher vessels and one processor to the project which would otherwise be engaged in the Atka mackerel fishery with an associated cod and pollock bycatch. They estimate the lost opportunity would be valued at \$1.5 million. In addition, it is estimated that a delay in the project of one week would cost the company approximately \$250,000 to keep the vessels available on the grounds.

The National Undersea Research Program, the Southeast Fisheries Center, and the University of Alaska Sea Grant Program have facilitated the use of the MANTA, the undersea observation vehicle, for this project. Coordinating the use of the MANTA has been a lengthy, complicated process; postponement of the project could preclude the availability of the MANTA for this research for this year.

There have also been time commitments made by Nor'Eastern Trawl and Natural Resources Consultants to spend several weeks on the fishing grounds during the research, foreclosing the opportunity to be involved in other projects.

We can not overemphasize the value of the cooperation between the companies, organizations, individuals, and NMFS staff which has occurred to bring this project to this point. The Highliners Association, Marine Resources Company, North Pacific Fishing Vessel Owners Association (which includes crabbers), Alaska Factory Trawlers Association, Fishing Vessel Owners Association, and others have met numerous times to develop the work plan for this project. Furthermore, delaying or terminating this project would severely hamper future cooperative effort of this scope.

The Environmental Assessment describes the proposed research as developed by the grantees in cooperation with NMFS and presents four alternatives that would modify the experiment as described. The alternatives are:

1. Restrict the geographic area of the proposed research to Zone 2.
2. Delay the research until 1988 during the open season in Zone 1.

3. Reduce the bycatch limits to 6,000 red king crab and 9,750 bairdi Tanner crab and count this catch against next year's bycatch PSC that actually results from the proposed project. ✓
4. Reduce bycatch limits to 72,200 red king crab and 70,000 bairdi Tanner crab, and count this against the 1987 PSC limits for the yellowfin sole joint-venture fishery.

The first three alternatives were developed in response to the concerns of the Alaska Crab Coalition. Alternative 1 is designed to conduct the research in an area of low crab density and outside Zone 1 and the closed zone where commercial joint-venture fishing is currently prohibited. Alternative 2 is designed to provide an alternate time window more aligned with the peak of the fishing season. Alternative 3 was proposed by the Alaska Crab Coalition in a letter to you from Mr. Kronmiller dated July 29, 1987. Alternative 4 was developed in an effort to keep the crab bycatch resulting from the experiment within the PSC limits established by the Council for the Bristol Bay stocks of red king crab and bairdi Tanner crab. The 72,200 crab limit for king crab is the portion of PSC remaining for red king crab in Zone 1 for the yellowfin joint-venture fishery. The bairdi Tanner crab limits present a special problem. The PSC in Zone 1 has been exceeded by the commercial fishery. We believe that there are two stocks of bairdi Tanner crab in the eastern Bering Sea. The Bristol Bay stock occurs primarily in Zone 1, with overlap into the eastern half of Zone 2. It should be recognized that the boundary between Zones 1 and 2 was based on the distribution of red king crab and has no relationship to the bairdi stocks. Given the distribution of yellowfin sole, we anticipate that almost all the take of bairdi crab by the yellowfin sole fishery would be concentrated in Zone 1 and the eastern portion of Zone 2. This area coincides with the range of the bairdi stock in the Bristol Bay region. To assess the impact of the experiment, we have, therefore, combined the PSC for Zone 1 and the portion of Zone 2 that is applicable to the Bristol Bay bairdi stock. These calculations are given in the Environmental Assessment and result in 70,000 bairdi crab remaining in the PSC.

Given that we have found no significant environmental impact from the proposed research experiment, and the need for data and information on this bycatch issue, I recommend that NMFS follow through with the approval of this proposed bycatch research experiment. It should be consistent with our initial commitment when we funded this S-K proposal.

I recommend that NMFS reject alternative 1 and allow the research to be conducted in the area where sufficient concentrations of yellowfin sole and crab can be located, most likely in Zone 1.

Alternative 1 would allow the experiment to be conducted but would greatly increase the chance of obtaining inconclusive results because of low densities of target fish species and crab.

I recommend that NMFS reject alternative 2 and give approval to the grantees to commence the research on August 9, as now planned. The delay proposed in alternative 2 would eliminate any future opportunity of the grantees to find willing subcontractors to provide fishing and processing vessels needed to conduct the experiment. Any compilation of data on encounter and injury rate of crab and any advances in gear designed to reduce bycatch and injury to crab would be lost for at least one year, if not longer.

I recommend that NMFS reject alternative 3. The low bycatch limits in this alternative could quickly terminate the experiment prematurely with one or two high trawl catches that have been observed in actual commercial operations. The application of the crab bycatch from the 1987 experiment to future 1988 PSC limits penalizes the trawl industry for attempting to conduct sound and important research that may benefit both groundfish and crab fisheries.

I recommend that NMFS adopt alternative 4. This alternative may somewhat constrain the research by forcing a change in the area of operation during the course of the experiment. If this happens, it would add another factor to the experimental design and reduce the effective sample size per design cell. We believe that the environmental impact of this research, as modified by alternative 4, will be within the impact assumed when the Council established TAC and PSC values for the 1987 groundfish fisheries. The S-K grantees have reviewed these reduced limits on crab bycatch for the experiment and agree that the research can be conducted within these limits.

I, therefore, recommend that NMFS approve this research experiment, as described in the Environmental Assessment with the modification of alternative 4 that reduces the bycatch limit to 72,200 red king crab and 70,000 bairdi Tanner crab. It is my belief that the take of animals caught during the course of this experiment will not have a significant impact on the environment or the stocks involved.

Attachments

I concur _____ Date _____

I do not concur _____ Date _____



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest Region
7600 Sand Point Way NE
BIN C15700, Bldg. 1
Seattle, Washington 98115

DEC 7 1984

F/NWR3:1501-20-010 rja

TO: F/NWC - William Aron
F/SWC - I. Barrett
F/SWR - E. C. Fullerton

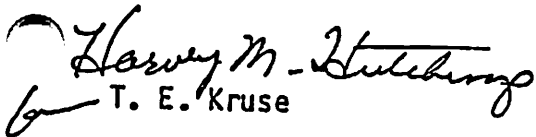
FROM: F/NWR - T. E. Kruse

SUBJECT: Criteria for Defining Scientific Research

We have finalized the subject criteria after incorporating the comments received in response to our August 2, 1984 memo to you, same subject. A copy of the final criteria is attached.

We intend to notify the Pacific Council that we will be referring to these criteria when evaluating proposals for experimental fishing or issuing acknowledgments of domestic scientific research under the Pacific Coast Groundfish or Salmon FMP's.

We appreciate your cooperation and assistance.


T. E. Kruse

Attachment

cc: F/1
F/11
F/12
GCF
F/S
F/S1
GCNW
U.S. Coast Guard
PFMC



CRITERIA FOR DEFINING SCIENTIFIC RESEARCH

The provision in the Magnuson Act which excludes scientific research from the definition of "fishing" covered by the Act contemplates activities that may result in or require the harvest of fish for scientific research purposes. Criteria to identify activities which qualify as scientific research under the exclusion include:

1. Scientific research which includes fishing must have as its primary objective, purpose or product the acquisition of data, information or knowledge. To determine whether an activity meets this first criterion, each scientific research proposal must be submitted in writing and demonstrate that:
 - a. The problem is researchable and will result in new information.
 - b. Application of existing knowledge alone is not sufficient to solve the problem.
 - c. Facts/data/samples will be collected, and analyzed in a scientifically acceptable manner and the results formally prepared and distributed.
 - d. Recognized scientific experts, organizations, or institutions with expertise in the field or subject matter area are sponsoring or are otherwise affiliated with the research.
 - e. Peer review of data, analyses, and conclusions will be involved.
2. Any fish taken under such scientific research exclusion may be sold only to offset the actual cost of such research but no financial profits will accrue from the fish harvested under the proposal. Before fish taken under a scientific research exclusion may be sold to offset the cost of such research, it must be demonstrated that this income is secondary or incidental to the primary goal of acquiring data, information or knowledge to solve a problem.

Northwest and Alaska Fisheries Center
7600 Sand Point Way Northeast F/NWC
BIN C15700, Building 4
Seattle Washington 98115

September 14, 1987

MEMORANDUM FOR: F - William Evans
FROM: F/NWC - William Aron *WA*
SUBJECT: Progress Report--Crab Bycatch Study,
September 8-14

Sampling for the S-K funded crab bycatch study ended on Saturday, September 12 when the 240th tow in the factorial experiment was taken aboard the Soviet factory ship Sulak. The Sulak and our NMFS personnel are currently enroute to Dutch Harbor, Alaska and will arrive on Tuesday, September 15. The usual weekly summary was not transmitted so most specific numbers are not available. Information relayed through other NMFS sources in Alaska, however, indicate that the final total groundfish catch was approximately 5,800 metric tons and the final tally of bairdi tanner crab was 67,845 crabs, red king crab was roughly 20,000 crabs. As you know, both crab numbers are below the ceilings established for the experiment.

11.6 - Bairdi / MT
3.4 - RKC / MT

cc: A. Thomson
J. Branson
R. McVey
D. Collinsworth
R. Schmitten
NRC
MRC
J. Brennan
K. Ford
B. Woods
M. Pedersen
R. Otto
R. Schaefer



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest and Alaska Fisheries Center
7600 Sand Point Way Northeast F/NWC
BIN C15700, Building 4
Seattle, Wash'ngton 98115

September 8, 1987

F/NWC1:GS

MEMORANDUM FOR: F - William Evans
FROM: F/NWC - William Aron
SUBJECT: Progress Report--Crab Bycatch Study,
September 1-7

The fourth week of the S-K funded crab bycatch study has been completed. A total of 234 trawls have been taken, 180 in the factorial experiment. The vessels are now making the final exchange of nets and the completion of the 240 tows in the experiment should occur within this week. The ROV Ocean Surveyor is in operation and the crew reports very good underwater visibility.

Preliminary catch information:

Yellowfin sole	3,081 mt	Red king crab	19,090 individuals
Other flatfish	946 mt	<u>Bairdi</u> Tanner crab	55,949 individuals
Cod	538 mt	Halibut	9,599 individuals
Other fish	366 mt	<u>BAIRDI</u>	11.3 / MT
		<u>RED KING CRAB</u>	<u>3.87 / MT</u>
<u>Total</u>	<u>4,931 mt</u>		

The experiment is approaching the Bairdi crab limit. Instructions are being sent to the field party to monitor the catch closely and take any necessary steps to assure that the ceilings are not exceeded, including termination of the work.

- cc: A. Thomson
J. Branson
R. McVey
D. Collinsworth
R. Schmitt
NRC
MRC
J. Brennan
K. Ford
B. Woods
M. Pedersen
R. Otto
R. Schaefer





UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 Northwest and Alaska Fisheries Center
 7600 Sand Point Way NE
 BIN C15700, Building 4
 Seattle, WA 98115

August 31, 1987 F/NWC1:GS

F - William Evans

F/NWC - William Aron

Progress Report--Crab Bycatch Study, August 24-31

MEMORANDUM FOR:

FROM:

SUBJECT:

The third week of the S-K funded crab bycatch study has been completed. A total of 167 trawls have been taken, 115 in the factorial experiment. The vessels will make their second exchange of nets today. Preliminary summary of catch data indicates that the two experimental nets retain fewer crab than the two control nets. Preliminary catch information:

Yellowfin sole	2,201 mt	
Other flatfish	657 mt	
Cod	288 mt	
Other fish	273 mt	
Total	3,419 mt	
Red kind crab	14,502 individuals	9.8 / MT
Baird Tanner crab	33,574 individuals	9.8 / MT
Halibut	6,534 individuals	9.8 / MT
Red King Crab		4.2 / MT

The experiment is still being conducted in the area bounded by 57-58°N and 162-163°W within zone 1. Catches exceeding 1,000 crab have occurred primarily in nighttime tows prior to the start of the factorial experiment.

The ROV Ocean Survey, the MANTA replacement, was installed aboard the F/V Oceanic in Dutch Harbor over the week-end. The vessel is scheduled to leave port today and should begin underwater observations on about September 1.

cc: A. Thomson

J. Branson

R. McVey

D. Collinsworth

R. Schmitt

NRC

MRC

- J. Brennan
- K. Ford
- B. Woods
- M. Pedersen
- R. Otto
- R. Schaefer





UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Northwest and Alaska Fisheries Center
 7600 Sand Point Way NE
 BIN C15700; Building 4
 Seattle, WA 98115

August 24, 1987

F/NWC1:GS

MEMORANDUM FOR: F - William Evans
 FROM: F/NWC - William Aron
 SUBJECT: Progress Report--Crab Bycatch Study,
August 16-24

The second week of the S-K funded crab bycatch study has been completed. A total of 94 trawls have been taken, 52 in the factorial experiment. The problems with sampling the catch that occurred during the first week and a half are primarily solved. The additional biologists to the field team arrived on Thursday.

Preliminary catch information:

Yellowfin sole	1190 mt	Red king crab	9083 individuals
Other flatfish	361 mt	Bairdi Tanner crab	22108 individuals
Cod	112 mt	Halibut	3341 individuals
Other fish	191 mt		
Invertebrates	12 mt		
		<u>BAIRDI - 11.84 / MT</u>	
		<u>RED KING CRAB - 4.86 / MT</u>	
<u>Total</u>	<u>1866 mt</u>		

The experiment is being conducted in the area bounded by 57-58 N and 162-163 W within zone 1. The first 34 tows were spent locating grounds with concentrations of yellowfin sole and workable levels of crab.

Arrangements have been made to replace MANTA with an ROV called the Ocean Surveyor from Offshore Diving and Salvage Corporation in Texas. Arrangements are being made to airship the system to Dutch Harbor on 27 August.

cc: A. Thomson
 J. Branson
 R. McVey
 D. Collinsworth
 R. Schmitten
 NRC
 MRC
 J. Brennan
 K. Ford
 B. Woods
 M. Pedersen



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest and Alaska Fisheries Center
7600 Sand Point Way Northeast F/NWC
BIN C15700, Building 4
Seattle, Washington 98115

August 17, 1987

MEMORANDUM FOR: F - William Evans
FROM: F/NWC - William Aron *W*
SUBJECT: Progress Report--Crab Bycatch Study,
August 12-15

PRELIMINARY REPORT

The first week of the S-K funded crab bycatch study has been completed. A total of 30 trawls have been taken. Fine tuning of gear and initial fishing to locate grounds have been completed. Problems of sampling the catch have occurred during the initial phase, but these are being solved through the addition of new biologists to the field team and the cooperation of the Soviet crew of the Sulak.

Preliminary catch information:

Yellowfin sole	265 mt	Red king crab	1,376 individuals
Other flatfish	91 mt	Bairdi Tanner crab	6,062 individuals
Cod	28 mt	Hallibut	823 individuals
Other fish	34 mt		
Invertebrates	4 mt		
		<u>BAIRDI - 14.3 / MT</u>	
<u>Total</u>	<u>421 mt</u>	<u>RED KING CRAB - 3.2 / MT</u>	

Efforts are still continuing to locate a video camera replacement for the Manta.

cc: A. Thomson
J. Branson
R. McVey
D. Collinsworth
R. Schmitten
NRC
MRC
J. Brennan
K. Ford