


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Acting Executive Director
DATE: January 31, 2001
SUBJECT: Groundfish Management

ESTIMATED TIME 4 HOURS (for all D-1 items)
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ACTION REQUIRED

- (a) Review discussion paper on vessel-by-vessel catch and bycatch disclosure.
- (b) Review bycatch information on freezer longline fleet.

BACKGROUND

Discussion paper on vessel-by-vessel disclosure

Several meetings ago, when discussing provisions of the AFA, the Council approved a motion to pursue a regulatory amendment package to allow disclosure of vessel-by-vessel catch and bycatch information, particularly as such information might assist compliance with certain provisions of the MSA regarding bycatch reduction. The AFA allows for this information to be released for certain AFA qualified vessels, but not the broader fleet. This issue arose again at our December meeting and I suggested that we needed a discussion paper to scope these issues, particularly given statutory prohibitions, at both the State and Federal level, that preclude release of such information. Elaine Dinneford of our staff, who handles the data issues for the Council and worked for many years at the CFEC, has drafted a discussion paper for your review (Item D-1(c)). That paper incorporates input from NMFS and ADF&G, and outlines a series of issues and options for the Council to consider before we can formalize an amendment package in this regard.

Bycatch information on the FLL fleet

At the last meeting you requested vessel specific (coded to protect confidentiality) information on bycatch of halibut and seabirds in the freezer longline fleet. NMFS staff will have that information at this meeting and will summarize it for the Council.

Council Staff Tasking Summary (Sunday February 11, 2001)

Existing Projects	Projected Weeks	A/E%	Comments
FMP Updates	3	100/0	Requires Council staff work in Spring 2001
AFA EIS/Proposed Rule	2	70/30	Requires Council staff work in Feb/Mar
AFA Report to Congress (final)	6	60/40	Final report will require staff work this fall/spring + contracts
EFH/HAPC Stakeholder Process	2	90/10	Council staff to coordinate stakeholder process in early 2001
Halibut Charter IFQ/Community Set-Aside	4	60/40	Direction in February
BSAI pot cod split	1	35/65	Action in February - Final Action in April JUNE
Cook Inlet bottom trawl ban*	1	50/50	Pending submittal to SOC
Halibut Subsistence/LAMPs	2	100/0	BOF in March
Develop RFP's/SOWs for AFA contracts	2	30/70	Requires interaction with ADFG, NMFS, and SSC in Feb/Mar
Observer Program (long-term changes)	3	50/50	Scheduled for April 2001 Agenda
SSL Measures (Committee & Analysis)	35	50/50	Major project - thru August
GHL Amendment	2	50/50	Finalize for SOC review.
Report to PEW Commission	2	70/30	Due by end of February
Other AFA related Measures - MTC proposal	3	80/20	Pending Council direction

TAC SETTING PROCESS
Previously Tasked Projects

CDQ Regulatory Amendment (Administrative)	1		Discuss in February (Policy Committee?)
Three separate sideboard pools	4	35/65	Pending Council direction ✓
P.cod reg. Amendments (2)	4	35/65	Pending Council direction - may depend on SSL measures
SR/RE retention	2.5	65/35	Not started
Shark/Skate FMP amendments	2.5	65/35	On hold pending tasking priorities. *Final Action JUNE
CDQ Reg amendments (omnibus)	?		On hold pending tasking priorities
HMAP <i>+ PSC Review</i>	?		On hold pending tasking priorities
Groundfish Processing sideboard alternatives/IRIU	4		Potential major project - Discuss in February
BSAI P. Cod Trawl LLP recency in BSAI			
P. Cod sideboards (Prichett proposal)			
Opilio VIP			
Break out 'other species" (GOA)	3	80/20	Council/NMFS Staff - Oct/Dec timeline

Potential New Tasking

Salmon bycatch reduction measures	?		Pending Council direction-Possible industry solution? Discuss in Feb/Paper in April
Community based QS (GCCC buy in proposal)	4	40/60	Pending Council direction - could be combined with charter IFQ set-aside package
GOA rationalization (Committee & Analysis)	?		Major project - pending Council direction & committee appt - Discuss in Feb/April
BSAI Crab Rationalization (Committee & Analysis)	12	30/70	Major project - pending Council direction & committee appt (+ contract help)
IFQ amendments	?		Pending Council direction
Catch/bycatch disclosure (vessel level)	?		Discussion paper in February
EFH EIS	?		Potential major project - Discuss in April

Discussion Paper
Changes Needed to Make Public Vessel by Vessel Harvest
and Bycatch Data Collected Under State or Federal Regulations
in All Fisheries in All Areas

There are both informational gaps and legal impediments relative to the public release of state and federally collected vessel specific harvest and bycatch data for all FMP fisheries in all areas of Alaskan waters.

- There is no bycatch data collected for vessels under sixty feet.
- There is only limited bycatch data for vessels between 60 and 125 feet.
- There is a State of Alaska statute protecting the release of vessel specific data from State sources.
- There is a Federal provision in the MS Act protecting the release of non-summarized information.

The scope of this paper is primarily limited to the problems associated with State or Federal release of data and does not address the absence of bycatch data for certain vessel sectors. This lack of data is mentioned merely to remind the reader what providing vessel by vessel bycatch data for all fisheries in all areas could involve.

Both State and Federal data are needed to provide the best possible harvest and bycatch information. State data contains round weights of fish harvested by catcher vessels making shoreside deliveries. Federal data contains round weight equivalents for the at-sea fleet. Bycatch amounts are officially collected only in the NMFS observer data base. Data from these three sources, combined for each vessel over a given time period, would provide both the amount of bycatch and a measure of the vessel's fishing activity.

State of Alaska Fish Ticket Data

Fish tickets are recognized by both the ADF&G and the NMFS as the best source of retained catch for catcher/vessel deliveries to shoreside plants. The release of confidential data is strictly regulated by Alaska Statute 16.05815. The passage of the AFA does not, in and of itself, change the State's ability to release confidential data. Therefore, there would need to be a change in AS 16.05815 (attached) unless the permit holder (skipper) voluntarily waives confidentiality rights or there is a court ordered release .

Changing AS 16.05815 would involve an amendment being drafted and submitted to the Alaska Legislature. The proposed bill would need a sponsor (the Governor or one or more legislators). The 2002 legislative session would probably be the earliest this approach could be attempted. Changing the law to release confidential data to the public would likely be extremely controversial and its chance of success is probably not high.

Individual skippers could specifically waive confidentiality rights to fish ticket data using a third party waiver form (copy attached). Since the State recognizes the rights of the permit holder as the official owner of the data, this is the individual who must agree to waive confidentiality. Vessel owners do not have automatic access to their vessel's fish ticket data.

A court order could be sought for the information. A court order would involve convincing a District/Superior court judge that there was a compelling and legitimate governmental reason for setting aside the State's confidentiality standards. If successful, any such order could be appealed. There have been court ordered releases of data in the past, but they have included a stipulation that each permit holder must be notified and given an opportunity to object.

Voluntary Release of ADF&G Fish Ticket Data by Catcher/vessels:

The voluntary release of fish ticket data by catcher/vessels would create a number of new tasks for the ADF&G and may even necessitate the creation of ADF&G regulations. A bycatch release form, specifying exactly what information would be released and how it would be used would need to be developed. The ADF&G would need to decide if bycatch waiver forms must be submitted annually, what steps would be needed for the skipper to rescind the permission, if such a decision could be retroactively, if there would need to be one form for each vessel fished, what type of process would there be for the data to be challenged, etc. The original, signed and notarized waiver forms would have to be kept on file, and a method developed to flag all fish ticket records for these skippers.

There is also a timeliness element to consider with fish ticket data. Beginning in 2000 groundfish ticket data entered in the field is almost immediately available in the statewide data base. However, there could be a considerable delay between the time the fish ticket is completed at the dock and its data entry.

Timely harvest data does exist for some vessels via Electronic Shoreside logbooks developed by the NMFS to track AFA vessels. These data contain most of the same data contained in State fish tickets and they are almost immediately available in the NMFS database at the time of the landing. Currently, all processors that receive groundfish from AFA vessels or pollock from a directed pollock fishery, are required to electronically report vessel specific harvest information. However, these data cannot be publically released as NMFS has agreed to treat the information in the same manner that fish ticket data would be treated under State confidentiality standards. This policy agreement was a condition required by the ADF&G for cooperative development of a single data acquisition program that would be used by both management agencies. (Consensus agreement of October, 1999).

Even if this agreement did not exist, it would be difficult to retrieve data by permit holder, as the CFEC permit card information was not included in the electronic data set. Thus, logbook data identifies the boat, not the skipper, and it is the signature of the skipper which is required to release information. Furthermore the NMFS and ADF&G have agreed that it is in the best interest of both agencies to recognize the State fish ticket data set as the official source of catch information for groundfish delivered to shoreside processors, so the use of the electronic data for bycatch disclosure would not be consistent with that policy.

Confidentiality of Federal Fisheries Information

Federal provisions regarding the release of company or vessel specific data are found in 16 U.S.C. § 1881a(b)(1), which states "Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed". This language is then followed

by six exceptions. Similarly to the State's AS 16.05815, there are provisions for voluntary waivers and court orders, a provision covering access by Federal and Council employees involved in FMP development and monitoring, as well as State or Marine Fisheries Commission employees. The last two other exceptions are 1) the verification of catch under an IFQ program, and 2) the public release of certain observer information collected in fisheries under the authority of the North Pacific Council (described below).

Existing Vessel by Vessel Bycatch Rates:

Thus, there currently are vessel specific bycatch information from the Observer Data program available on the NMFS Alaska regional web site. The specific types of data released are described by regulatory language within Amendment 25 to the Groundfish FMP for the BSAI. They include the federal permit number, vessel name, gear, target fishery, bycatch rates for halibut, herring, red king crab, bairdi, other tanner crab, the number of observed hauls and basket samples, the weight of basket samples and the weekend ending catch date for harvests within both the BSAI and GOA.⓪

Limitations of this data source include: Only observed vessels are reported; only rates are shown, not actual amounts of bycatch and/or the amount of retained fish; and the data are from observer data prior to debriefing.. **Without actual volumes of bycatch and harvest, it is difficult to use the data to distinguish between a vessel with a high bycatch rate but a small amount of bycatch and a vessel with a low bycatch rate but a high volume of bycatch.**

However, at least some individuals have made use of these data to characterize vessels' fishing operations. For example, the table of opilio bycatch rates in the yellowfin sole fishery prepared by John Gauvin and shown in Agenda Item D-2(A), February, 2001, comes from the published data. In another example, Mr. D. Fraser used the published vessel bycatch reports to list "the best and worst boats in terms of number of weeks with no bycatch or above a guideline rate" in an effort to create peer pressure on vessel operators to reduce bycatch. (From "The Good, the Bad, & the Ugly" at [Http://olympus.net/personal/dfraser/](http://olympus.net/personal/dfraser/)).

Required Federal Regulatory Changes to Accommodate AFA Information Disclosure

Fishery Co-operative Limitations. Under section 210(a)(1), the AFA mandates for public notice and disclosure of fishery co-operative agreements and also requires the Council and Secretary to determine what information will be made available about the harvest of fish in the directed pollock fishery by vessels in a fishery co-operative. The type of information that appears to be envisioned under 210(a)(1) for disclosure might include: vessel identification, harvest amounts by species (including prohibited species), and/or harvest rates of species. Information could be provided weekly, although NMFS is working towards the development of vessel-specific harvest information at levels approaching catcher/processor haul-by-haul or catcher vessel landings information.

Although regulations are not necessary to support the disclosure of this information for purposes of section 210(a)(1) of the AFA, the development of a regulatory infrastructure that clarifies the specific information that will be disclosed would be prudent for several reasons.

First, the Council and NMFS are required to consider the interest of parties to fishery co-operative information when determining the appropriate information to be released. Assumedly, this means the Council and NMFS would be required to confer with a fishery co-operative's representative prior to the release of information. Regulations that list the specific information to be released would provide clear guidance to fishery co-

operatives on disclosure expectations and avoid case-by-case consideration by the Council and NMFS of 'appropriate information' to be disclosed as different co-operatives are developed.

Second, this guidance would allow the efficient response to independent public requests for vessel specific information. The alternative would be a review by NMFS and General Counsel for each data request to determine whether the request would be within the scope of information disclosure deemed appropriate by the Council and NMFS for a particular co-operative. This process would obviously be cumbersome, time consuming, and subject to other work priorities within NMFS and NOAA-GC.

The regulations necessary to support effective disclosure of harvest information authorized under section 210(a)(1) could be developed and implemented in tandem with other management measures the Council will be considering for AFA implementation.

Bycatch Information: Section 211(d) gives general discretionary authority to the Council to recommend and NMFS to approve disclosure of information that would be beneficial to minimizing discards or discard mortality. Regulations would be required to enact this authority for the BSAI and GOA groundfish fisheries under new FMP amendments, given the discretionary nature of the provision. ~~An analysis would be needed~~ on whether and to what extent the public disclosure of groundfish fisheries data would be beneficial in reducing bycatch. The analysis should also identify any constraints that existing State confidentiality statutes pose for the release of vessel specific catch information so that the Council and NMFS may work more effectively with the State toward resolving specific issues that impede meeting the objective of Section 211(d) of the AFA.

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Section 211(d) applies to information generated pursuant to existing regulations. Other information exists, such as State fish tickets, which could not be disclosed absent an independent federal information collection requirement. Thus, regulations also could be needed to collect additional information that NMFS currently does not collect. These regulations would have to be justified relative to the statutory authority and establish which vessels would be subject to the information disclosure.

The nature and scope of the information disclosed would depend on whether the disclosure of the information is punitive or informational. For example, disclosure of a vessel's species-specific harvest, harvest rate, or discard activity for punitive purposes might require that debriefed observer data be used rather than undebriefed, resulting in time delays in releasing information.

Vessel identification associated with haul by haul harvest and location data may not be important for purposes of discard reduction, but could be desirable if the Council believed that the potentially punitive nature associated with releasing a vessel's identification or the name of a skipper of the vessel would result in a reduction of bycatch. Although Magnuson-Stevens Act limitations on the disclosure of confidential information can be waived, disclosure restrictions under other applicable law must also be considered.

Public Release of Observer Data

This past year, NMFS has discussed options regarding the release of observer data. Rulemaking would be required for the release of vessel catch data consistent with 16 U.S.C. § 1881a(b)(1)(E) and other applicable laws. One option discussed would be to release the following historic observer data (since 1995) on a weekly aggregated basis: vessel identification and catch composition data, including that of prohibited species. NMFS also have discussed an option of releasing this historic information on a haul-by-haul basis, but without vessel identification. Pending authorizing rulemaking, NMFS also would be supportive of creating and maintaining

an Internet Website that would enable public access to the observer catch and species composition database. This rule and its supporting analysis would need to clarify that, from time to time, some of this information may be protected from release by applicable confidentiality requirements (e.g., the Privacy Act and Trade Secrets Act).

Current year observer data also could be provided to the public upon completion of each observer's cruise and the debriefing of the observer. The debriefing of observers is a process that NMFS uses for data quality control purposes to ensure that incorrect data are not used by NMFS or the public. The proposed release of these data would follow the same format as that for historic data. In other words, the data would be aggregated for each fishing week by species and vessel identification provided. Similar information on a haul-by-haul basis could be released without vessel identification. Existing regulations ensure that the maximum deployment time period for observers is 90 days. Debriefing typically occurs within a week or two after completion of the cruise. Thus, the maximum time frame for the release of current year debriefed observer data would be three to four months after the data are collected; in some cases, it could be sooner.

Co-op Reports :

While the governmental agencies are unable to release vessel by vessel harvest and bycatch data, this information is reported by the private sector for vessels in AFA Co-ops as mandated in the AFA. The data originate from the same sources which the governmental agencies are prohibited from releasing: the Observer Program, the NMFS Shoreside Logbook Reporting Program, and State fish tickets. These reports contain a wealth of vessel specific harvest and bycatch data. Currently there is no procedure in place for these data to be verified by the NMFS/Council.

The AFA co-op reports allow public to scrutinize an individual AFA vessel's actual annual harvest and bycatch. It would not seem unreasonable to assume that this fleet might view the unavailability of similar data from other fleet's as inequitable.

Some Possible Council Options/Actions

The Release of State or Federal Harvest Records:

1. Investigate the possibilities of amending Alaska Statute 16.05(815) (State data) and 16 U.S.C. § 1881a (Federal data).
2. Pursue the submission of voluntary waivers by fishermen .
3. Pursue court ordered releases.

AFA Co-op Reporting :

1. Develop a regulation clarifying the information required and providing guidance on answering independent public requests for vessel specific information.
2. Request the NMFS to do annual audits ^{of} the Co-op's reports, which would allow these reports to become the standard public reporting mechanism for vessel harvest and bycatch data for these vessels.

3. Request the breakout of discarded and retained non-targeted groundfish by species or species complex in the requested data.

Bycatch Data for All Vessels and All Areas:

Implement regulations under authority of paragraph (E) of 16 U.S.C. § 1881a(b)(1) to provide for public access to some combination if the following :

1. historic observer data (since 1995) on a weekly aggregated basis, to include vessel identification, and catch composition data, including that of prohibited species.
2. historic information on a haul-by-haul basis, but without vessel identification.
3. current observer data on a weekly aggregated basis, to include vessel identification, and catch composition data, including that of prohibited species.
4. current observer information on a haul-by-haul basis, but without vessel identification.
5. a NMFS Internet Website containing the observer catch and species composition database, at the same time meeting any other federal applicable confidentiality requirements (e.g., the Privacy Act and Trade Secrets Act).
6. the actual amounts of bycatch and total harvest for the existing weekly reports for individual vessels.
7. the cumulative amount (number or metric tons) of regulatory discards for each vessel on a quarterly or annual basis.

Modification of Existing Reports

If the Council's goal was the public identification of vessels with high bycatch, then exploring ways of presenting the existing information might be helpful. One option might be to amend paragraph (E) to release the total bycatch and harvest data for groups of vessels, and name the vessels within the group. (e.g. the 10 vessels with the lowest (or highest) bycatch are. Boat1...Boat10, followed by the group's aggregate bycatch and harvest amounts, Etc..).

Another possibility might be to subgroup the vessels in the existing reports using ranges of tons harvested. For example, list the existing bycatch rate information by vessels by whose targeted harvest is less than 50 mt, between 51 and 100 mt, over 100 mt. Etc .

Another possibility might be to publish vessel specific data under voluntary waivers and then publish the vessel names and the aggregate bycatch and harvest of vessels which did not release the information.

Another way might be to allow vessels to group themselves so that aggregated bycatch and harvest information for the group could be released. Or, instead of identifying vessels with large amounts of bycatch or high bycatch rates, NMFS might identify vessels with low bycatch/bycatch rates (e.g. something akin to a 'Dean's List').

Sec. 16.05.815. Confidential nature of certain reports and records.

(a) Except as provided in (b) and (c) of this section, records required by regulations of the department concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department or by the Alaska Commercial Fisheries Entry Commission except as set out in this subsection. The department may release the records and reports set out in this subsection to the Alaska Commercial Fisheries Entry Commission. The department and the Alaska Commercial Fisheries Entry Commission may release the records and reports set out in this subsection to the recipients identified in this subsection if the recipient, other than a recipient under (5) - (8) of this subsection, agrees to maintain the confidentiality of the records and reports. The department and the Alaska Commercial Fisheries Entry Commission may release

(1) any of the records and reports to the National Marine Fisheries Service and the professional staff of the North Pacific Fishery Management Council as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the exclusive economic zone;

(2) any of the records and reports to the professional staff of the Pacific States Marine Fisheries Commission who are employed in the Alaska Fisheries Information Network project for the purpose of exchanging information with users authorized by the department;

(3) any of the records and reports to the Department of Revenue to assist the Department of Revenue in carrying out its statutory responsibilities;

(4) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable;

(5) such records and reports as necessary to be in conformity with a court order;

(6) on request, the report of a person to the person whose fishing activity is the subject of the report;

(7) fish tickets and fish ticket information to the division of fish and wildlife protection, Department of Public Safety;

(8) fish tickets and fish ticket information to the law enforcement personnel of the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration for the purpose of enforcing fishery laws in waters of this state and in waters of the exclusive economic zone adjacent to this state;

(9) fish tickets and fish ticket information regarding halibut to the International Pacific Halibut Commission; and

(10) any of the records and reports to the child support enforcement agency created in AS 25.27.010 , or the child support enforcement agency of another state, for child support purposes authorized under law.

(b) Except as provided in (c) of this section, records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information.

(c) Crab stock abundance survey information that reveals crab catch by sampling location is confidential and is not subject to inspection or copying under AS 40.25.110 - 40.25.120 until the close of the fishing season for which the survey was conducted.

(d) Except as otherwise provided in this section, the department shall keep confidential (1) personal information contained in fish and wildlife harvest and usage data; and (2) the records of the department that concern (A) telemetry radio frequencies of monitored species; (B) denning sites; (C) nest locations of raptors that require special attention; (D) the specific location of animal capture sites used for wildlife research or management; and (E) the specific location of fish and wildlife species. The department may release records and information that are kept confidential under this subsection if the release is necessary to comply with a court order, if the requestor is a state or federal agency, if the requestor is under contract with the state or federal agency to conduct research on a fish or wildlife population, or if the requestor has been authorized by the department to perform specific activities and agrees to use the records and information only for purposes as provided under a contract or agreement with the department. After 25 years, the records and information that are kept confidential under this subsection become public records subject to inspection and copying under AS 40.25.110 - 40.25.140 unless the department determines that the release of the records or information may be detrimental to the fish or wildlife population. In this subsection, "personal information" has the meaning given in AS 44.99.350.

State of Alaska
Department of Fish & Game

Third Party Fish Ticket Data Report Request

Pursuant to Alaska Statute 16.05.815, individual fish ticket records are defined as confidential. The department can provide a data summary of fish ticket landing records to CFEC permit holders. The Fish Ticket Data Report Request must be completed and signed in the presence of a notary public or authorized ADF&G personnel.

The department cannot provide vessel based fishing history data. The department is unable to provide photocopies of fish tickets. This notarized form may be submitted to any area office of the Alaska Department of Fish and Game, or sent directly to:

Alaska Department of Fish and Game
Division of Commercial Fisheries/FTR Section
P.O. Box 25526 • Juneau, AK 99802-5526
Phone: (907) 465-4210 Fax: (907) 465-2604

Halibut landing data is available only from the International Pacific Halibut Commission (206) 634-1838.
CFEC permit number landings data is available from 1975 forward.

Please complete every item and print legibly — failure to fully complete this form may cause delays in the release of your records.

Permit Holder

I, _____ Enter name of CFEC permit holder here, hereby request ADF&G fish ticket records of my fishing activity for my following commercial fishing permit number(s):

Provide complete permit number (e.g., M07B00000X)

1) _____ Enter permit number here 2) _____ Enter permit number here

3) _____ Enter permit number here, for the year(s) _____ Enter permit year(s)

Please indicate the ADF&G vessel number(s) if you want the report limited to a specific vessel(s):

_____ Enter ADF&G vessel number(s) here

Signature of CFEC Permit Holder

Mailing/Street Address

City, State and Zip Code

Telephone Number _____ Fax Number _____

Email Address

Social Security Number _____ Today's Date _____

I authorize the release of these records to the following individual or representative:

Name of Authorized Individual or Representative

Mailing/Street Address

City, State and Zip Code

Telephone Number _____ Fax Number _____

Email Address

Notary

(required for submission by U.S. or Courier mail, or by fax)

Subscribed and sworn before me _____ Signature of Notary Public

this _____ day of _____, 20____.

My Commission expires _____ Month/Day/Year.

Notary Seal or Stamp
Here

ADF&G Authorized Personnel

(may be substituted for notarization for walk-in submissions only)

Signature of ADF&G Authorized Personnel

Date Received: _____ Month/Day/Year

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF COMMERCIAL FISHERIES

TONY KNOWLES, GOVERNOR

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465 4210

January 19, 2001

Ms. Elaine Dinneford
North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Ms. Dinneford:

Thank you for your letter to Kevin Duffy dated January 4, 2001 concerning the release of vessel-by-vessel fisheries data to the public pursuant to passage of the American Fisheries Act (AFA). As Kevin has a heavy travel schedule, I have been asked to answer your letter. Your letter described a need for Alaska Department of Fish and Game (ADF&G) to update its previous response on this matter which was submitted to you by Dr. Kruse on January 27, 1999 so that it is applicable to all groundfish fisheries in the Gulf of Alaska and in the Bering Sea/Aleutian Islands.

Since the ADF&G position has not changed appreciably over the last two years, I have included below Dr. Kruse's original response to the Council on this matter almost in its entirety. Minor revisions have been added to reflect changes since the original response was written.

1. What regulations need to be changed for the Council and the Secretary to implement such a data release program?

The release of confidential data by ADF&G is strictly regulated by Alaska Statute 16.05815 (enclosed), so passage of the AFA does not, in and of itself, change our ability to release confidential data to the public. Therefore, a change in this statute is necessary for the State of Alaska to comply with this AFA requirement. Failing a statutory change, the only other way to meet AFA requirements would be for skippers of vessels to sign waivers allowing release of confidential data on their operations.

2. How can the regulations be changed and what would be an appropriate time frame for changing the regulations.

A change in the State of Alaska confidential statute requires an amendment to AS 16.05.815. For this to occur, an amendment must be drafted and submitted to the Alaska Legislature. A bill would need to be sponsored by the Governor or one or more legislators to introduce the proposed changes during the 2001 legislative session. Once introduced, legislative hearings would be conducted and the amendment would need to be voted on and approved. The timetable for passage of any amendment depends on how controversial it is, how much support it has and what other issues control the legislative calendar. In 1999, our division formed a committee to review AS 16.05.815 for needed changes. The committee determined that it was important to include the Alaska Fisheries Information Network Support Center (AKFIN-SC) and NMFS enforcement agents on the list of approved

Ms. Elaine Dinneford

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January 19, 2001

recipients of confidential data. Accordingly, an amendment was drafted and it eventually became law. Any further changes to AS 16.05.815 would be challenging.

3. How would releasing the data be beneficial in implementing Section 301(a)(9) or Section 303(a)(11) of the Magnuson-Stevens Act?

The release of such information should be consistent with implementing Section 301(a)(9) or Section 303(a)(11) of the Magnuson-Stevens Act to provide better data to achieve better management. National Standard 9 requires that management shall, to the extent practicable, minimize bycatch and bycatch mortality. Of course, all fisheries with fishery management plans (FMPs) must comply with these standards. For FMP fisheries, access to vessel-specific data is needed by the Council to evaluate the net benefits of any fishery with respect to bycatch and bycatch mortality. Alaska Statute 16.05.815 already allows the State to provide vessel-specific data "for preparation and implementation of the fishery management plans" In the case of cooperative fisheries, the AFA holds these vessels to a higher standard of public accountability regarding bycatch.

4. What information does your agency feel is appropriate to release?

The type of data most appropriate to understanding the benefits arising from relevant fishing activities include all catch and bycatch information from participating vessels.

5. How often should the data be released?

The Council should determine the schedule for public release of such data. Whether these releases are annually or quarterly depend upon the Council's need to address problems arising from AFA affected fisheries.

6. What mechanisms should be used to make the information available?

Provided that participating skippers sign appropriate waivers so that vessel-specific confidential data can be made available to the public, the State of Alaska believes that the mechanism for such releases of standardized data should be through the AKTIN-SC and/or other alternatives being considered by ADF&G.

If you have additional questions on this topic, please contact Earl Krygier.

Sincerely,



Robert J. Piorkowski
Scientific Program Manager

Enclosure

cc: Kevin Duffy
Earl Krygier

**Bird and Halibut Bycatch Rates
Freezer Longline Fleet
1998 through 2000**

NMFS ALASKA REGION

Summary bycatch information for bird and halibut bycatch by the freezer longline fleet is presented for the years 1998 through 2000. Annual data are presented by vessel, but vessels are listed by a coded identifier. Actual vessel names or permit numbers are not included.

Bird Bycatch

Background

Coinciding with a global awareness of seabird/fishery interactions, NMFS has been collecting data on seabird/fishery interactions since 1990. In groundfish fisheries off Alaska, longlines account for most seabird bycatch. Longlines may catch surface-feeding seabirds that are attempting to feed on baited hooks. During setting of the line, seabirds are hooked as they attempt to capture the bait. Birds that habitually scavenge floating material from the sea surface are also susceptible to being hooked on longlines.

Preliminary estimates of the annual seabird bycatch for the Alaska groundfish fisheries, based on 1993-1999 data, indicate that approximately 17,000 seabirds are taken annually in the combined BSAI and GOA groundfish fisheries (14,600 in the BSAI; 2,300 in the GOA) at average annual rates of 0.10 and 0.06 birds per 1,000 hooks in the BSAI and GOA, respectively (NMFS, draft SEIS January 2001). Except for the endangered short-tailed albatross, the U.S. Fish & Wildlife Service (USFWS) has not determined to what degree this incidental catch may be impacting seabird populations. Through population modeling, USFWS determined that the incidental catch of short-tailed albatrosses in the groundfish longline fisheries may slow the recovery of this endangered species.

Regulatory Measures

NMFS required hook-and-line vessels fishing for groundfish in the BSAI and GOA and federally permitted hook-and-line vessels fishing for groundfish in Alaskan waters adjacent to the BSAI and GOA, to employ specified seabird avoidance measures to reduce seabird bycatch in 1997. Measures were necessary to mitigate

hook-and-line fishery interactions with the short-tailed albatross and other seabird species. Prior to 1997, measures were not required, but anecdotal information suggests that some vessel operators may have used mitigation measures voluntarily. NMFS required seabird avoidance measures to be used by vessels fishing for Pacific halibut in U.S. Exclusive Economic Zone (EEZ) waters off Alaska the following year.

By regulation, all vessel operators using hook-and-line gear to fish for groundfish and Pacific halibut must conduct fishing operations as follows:

1. Use baited hooks that sink as soon as they are put in the water.
2. Discharge offal in a manner that distracts seabirds from baited hooks (if discharged at all during the setting or hauling of gear).
3. Make every reasonable effort to ensure that birds brought on board alive are released alive. In addition, all applicable hook-and-line vessels at or more than 26-ft length overall, must employ one or more of the next four measures.
 - Set gear at night (during hours specified in regulation).
 - Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks.
 - Tow a buoy, board, stick, or other device during deployment of gear at a distance appropriate to prevent birds from taking hooks.
 - Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during the deployment of gear.

Factors Affecting the Take of Birds

The risk to seabirds of getting caught in fishing gear varies with bird species and gear type. Other factors that may influence risk include season, location of fishing, and weather conditions. Alaskan fishermen currently are provided some flexibility in choice of the regulatory mitigation options in that they can select the most appropriate and practicable methods for their vessel size, fishery, and fishing operations and conditions. Although the same fishing techniques are generally used, vessels of different types (freezer-longliner vs. catcher vessel) and size classes differ in ways that may affect the likelihood of taking birds. For instance, differences in species targeted, fishing gear, bait used, hooks set per day, setting speed, and consistent use of effective seabird avoidance measures may contribute to the number of birds a particular vessel takes and its bycatch rates.

The occurrence and density of seabird species at sea vary greatly at different places and times, according to habits of the birds,

breeding activities, migration, and habitats, abundance, and movements of forage species. Any of these factors may also play a role in the likelihood of vessels encountering and taking birds incidentally.

Research Study on Effectiveness of Seabird Avoidance Measures

The Washington Sea Grant Program (WSGP) began experimental research studies in 1999 to test the effectiveness of selected seabird incidental catch deterrent measures in the individual fishing quota (IFQ) halibut and sablefish fishery and in the BSAI Pacific cod freezer-longliner fishery. The goal of the research program is to develop methods to reduce the incidental capture of seabirds in Alaska longline fisheries without decreasing the target catch or increasing the bycatch of other species. Five meetings were held with industry representatives in Seattle, Washington between March 1999 and March 2000. During these meetings, seabird deterrent strategies were discussed and specific strategies were chosen for testing in the research program. The interactions between WSGP research staff and industry representatives (including vessel crews) during the actual on-board research and the industry advisory sessions created an atmosphere of heightened awareness about the bycatch problem, allowed for direct involvement in the research project by vessel crew, and encouraged problem-solving efforts throughout much of the fleet.

Paired streamer lines and weighted gear were the two deterrent measures tested against a control in the IFQ fishery. Line shooters, lining tubes, and weighted gear were the three deterrent measures tested against a control in the BSAI Pacific cod fishery. Night-setting was also tested in the BSAI Pacific cod fishery. Ed Melvin, the WSGP researcher conducting the study, is scheduled to present final results at the Council's meeting in April 2001. He intends to recommend changes to the existing regulations based on the scientific findings of his research.

Bird Bycatch Data

Table 1 shows the rates of bird bycatch in 1998 through 2000 by vessel (coded ID). The data in Table 1 are sorted by descending rate in 2000. Table 1 also shows the annual percent of sets that had at least one bird caught.

Rates of bird bycatch by vessel vary by two orders of magnitude. There is also considerable difference in the percent of sets with

bird catch. Comparing the overall bycatch rates with the percent of sets with bird catch indicates that some vessels catch birds often -- have many sets with bird catch, but do not catch many birds in each set. Other vessels have a lower percent of sets with birds, but higher bycatch rates, indicating that when birds are caught, many are caught at one time.

Figure 1 displays the 2000 bird bycatch rates by vessel graphically.

Figure 2 shows the 1998 through 2000 bycatch rates for three vessels that had consistently high rates in the three years and had the three highest rates in the fleet in 2000.

Figure 3 shows vessels that had 2000 bycatch rates of less than .1 birds per 1000 hooks and showed improvement in rate over the previous two years. In several cases the 2000 bycatch rate was dramatically lower (e.g. vessels 18, 12, 6, 21, 33).

Figure 4 shows other vessels that had 2000 bycatch rates of greater than 0.1 birds per 1000 hooks.

Halibut Bycatch

Rates of halibut bycatch were also examined for the freezer longline vessels.

Table 2 shows annual average halibut bycatch rates by vessel in the Pacific cod target fishery. The rates shown are bycatch, in kilograms of halibut per metric ton of groundfish. The mortality rate factor for the longline Pacific cod fishery has not been applied to these data.

Figure 5 displays the data from Table 2. The type of trends seen in the bird bycatch data do not appear to be present in the halibut bycatch data. The rates vary widely from vessel to vessel and year to year.

Figure 1. 2000 Bird Bycatch Rates

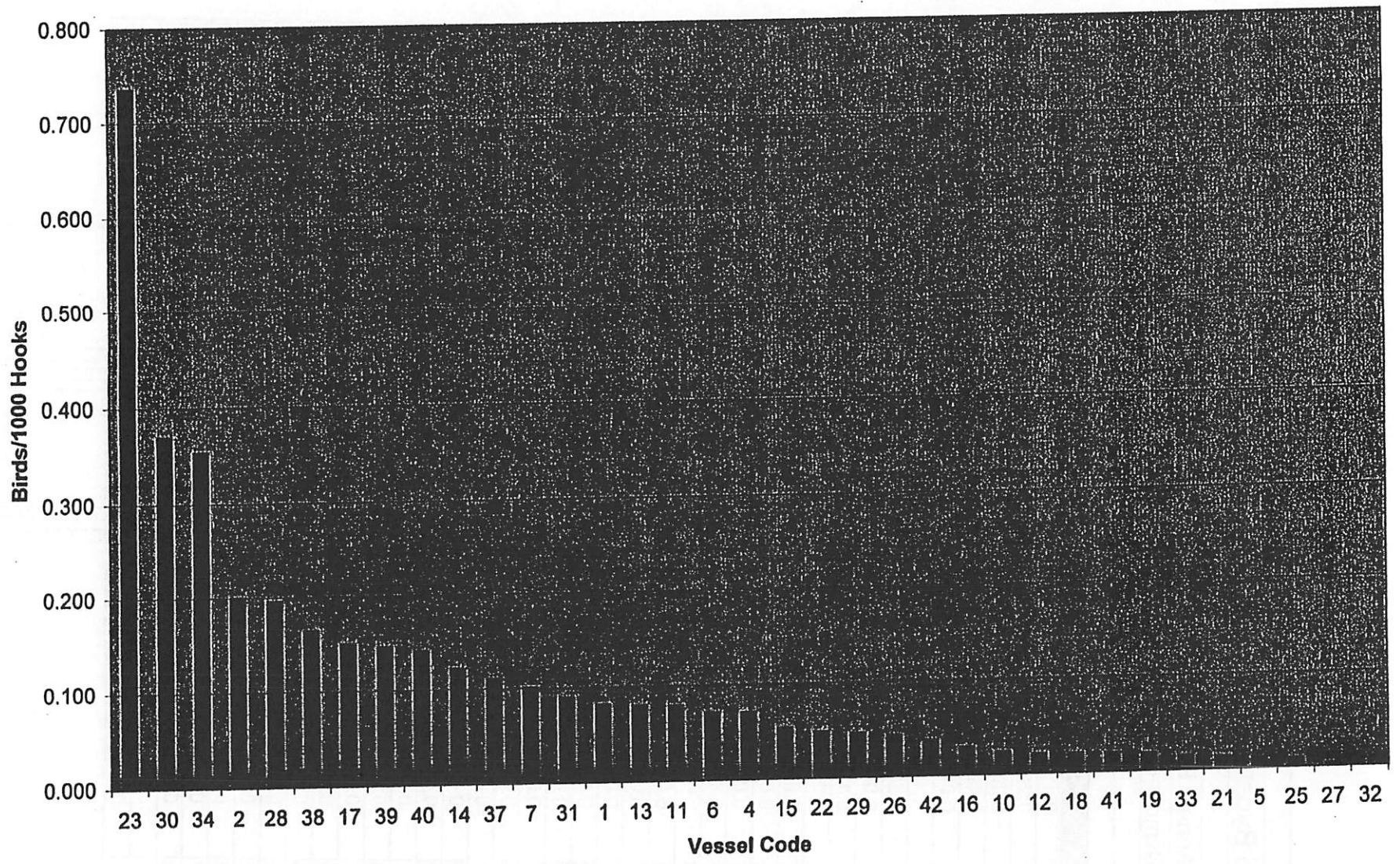


Figure 2. Bird Bycatch - Group A

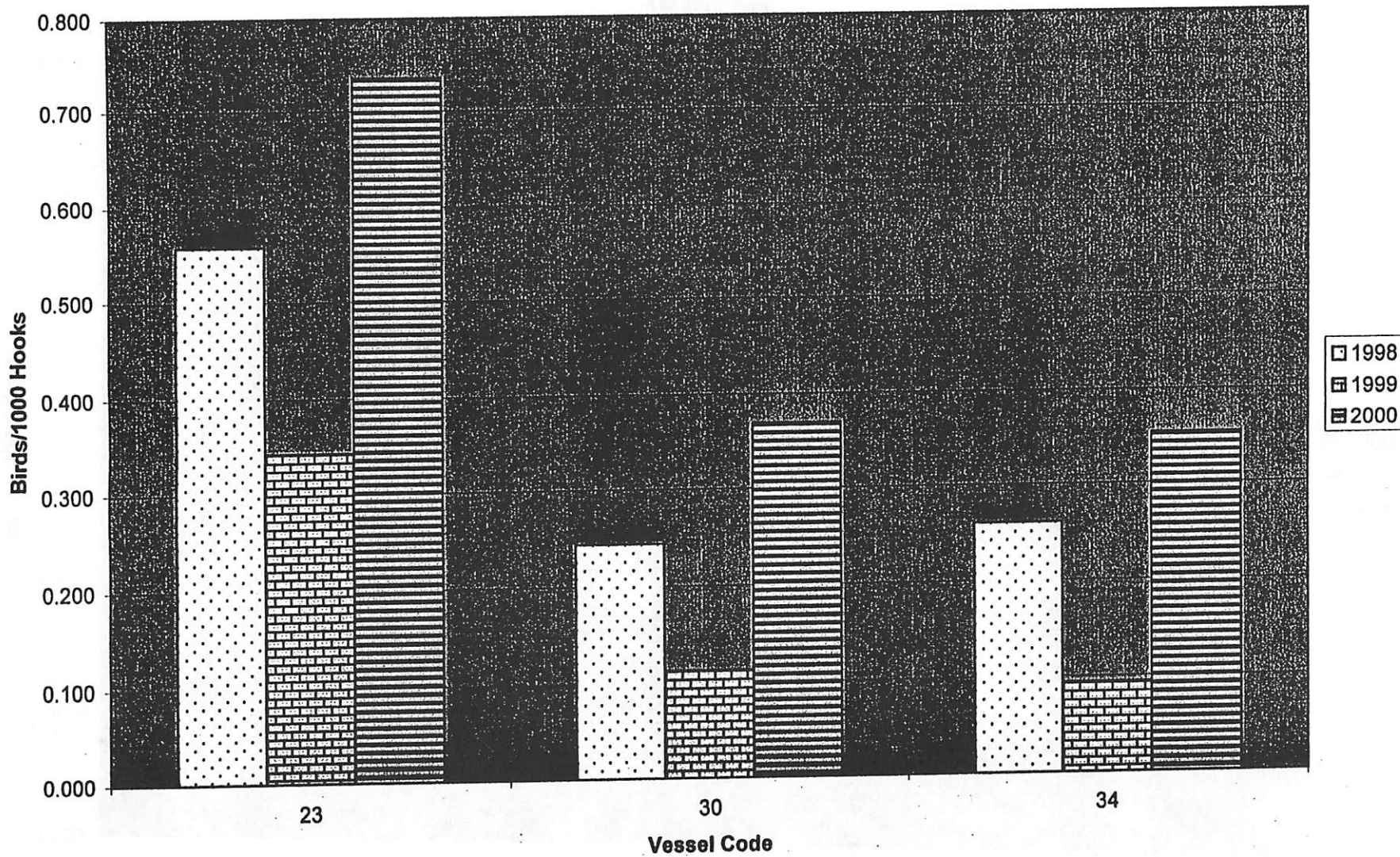


Figure 3. Bird Bycatch - Group B

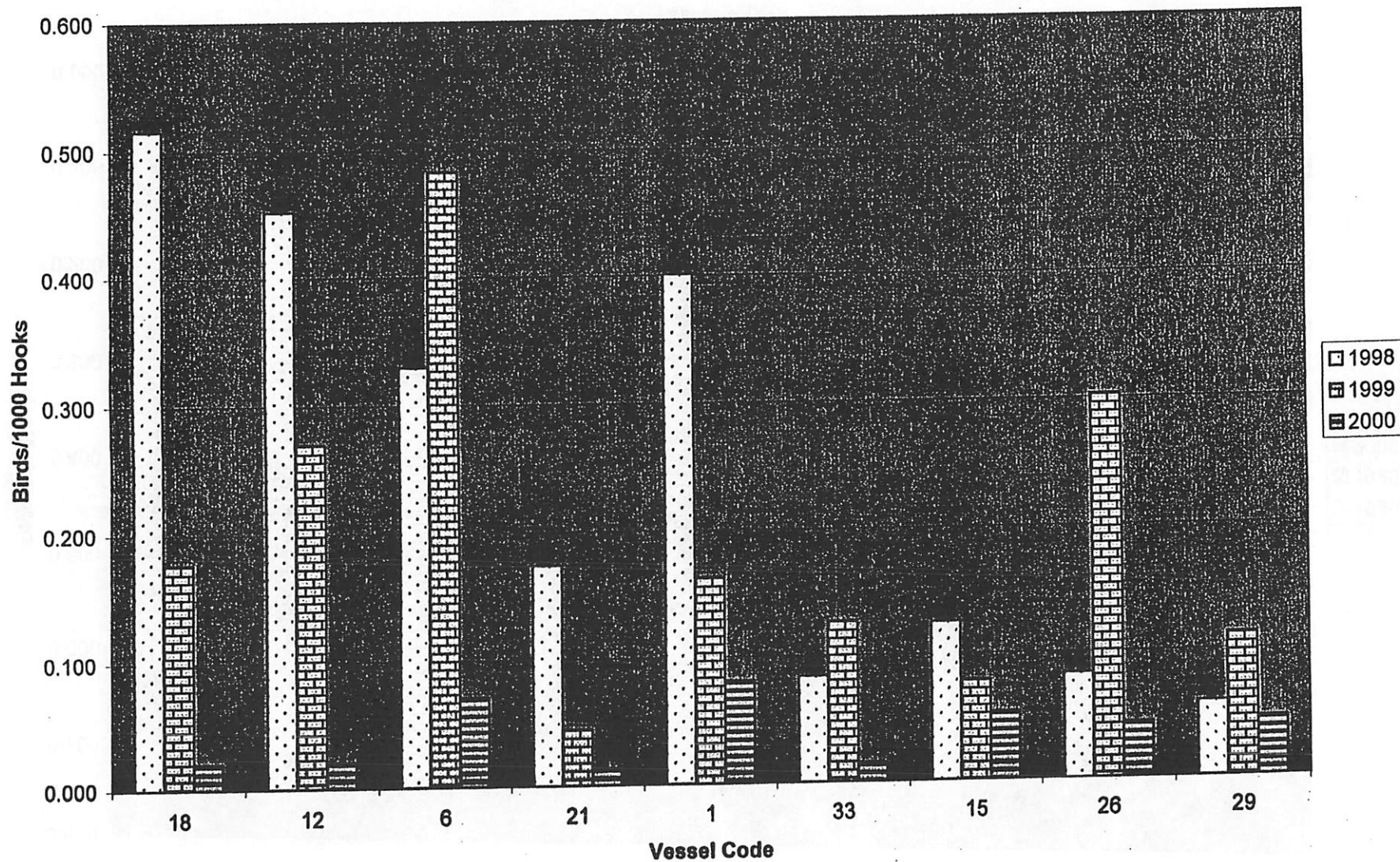


Figure 4. Bird Bycatch - Group C

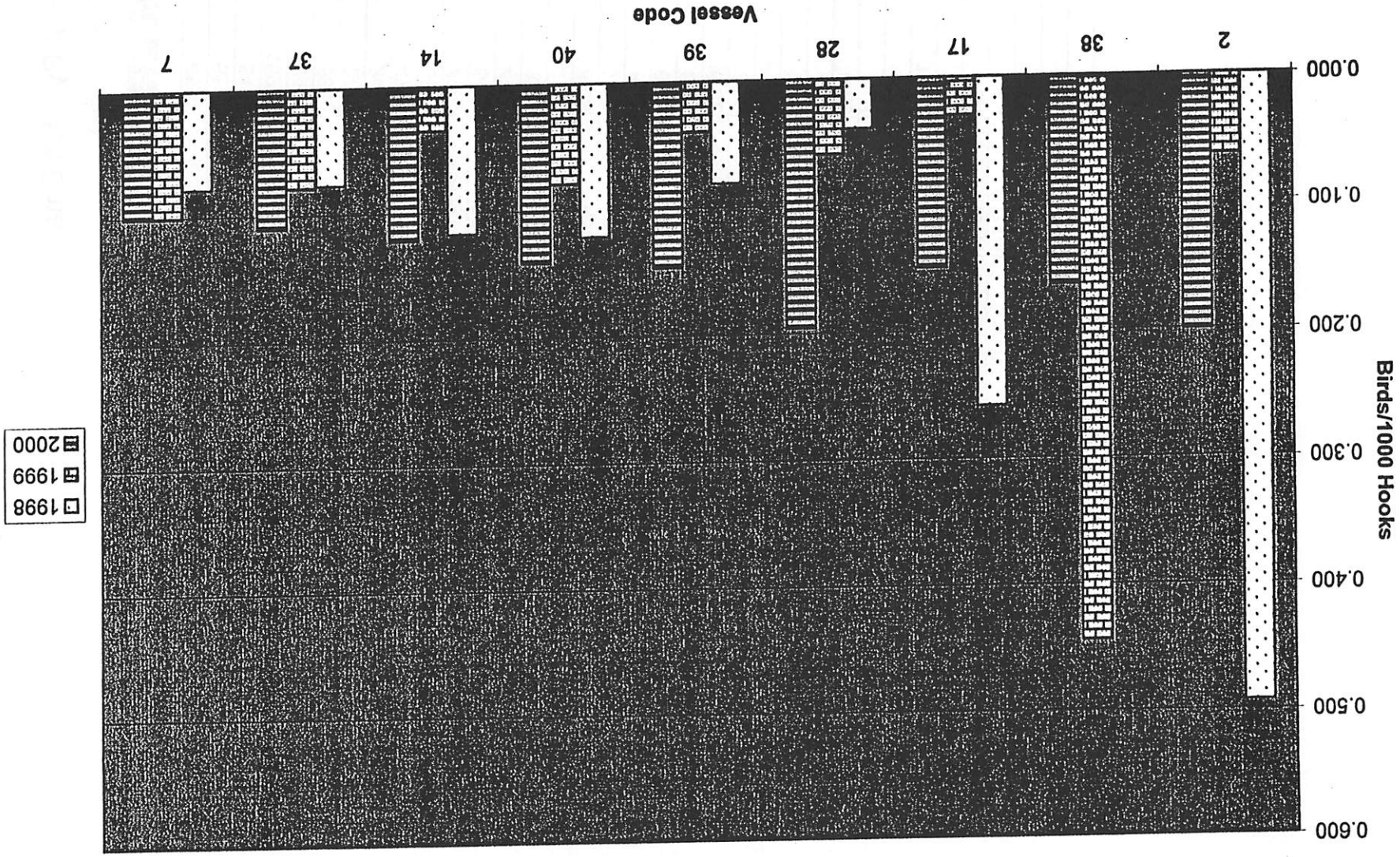
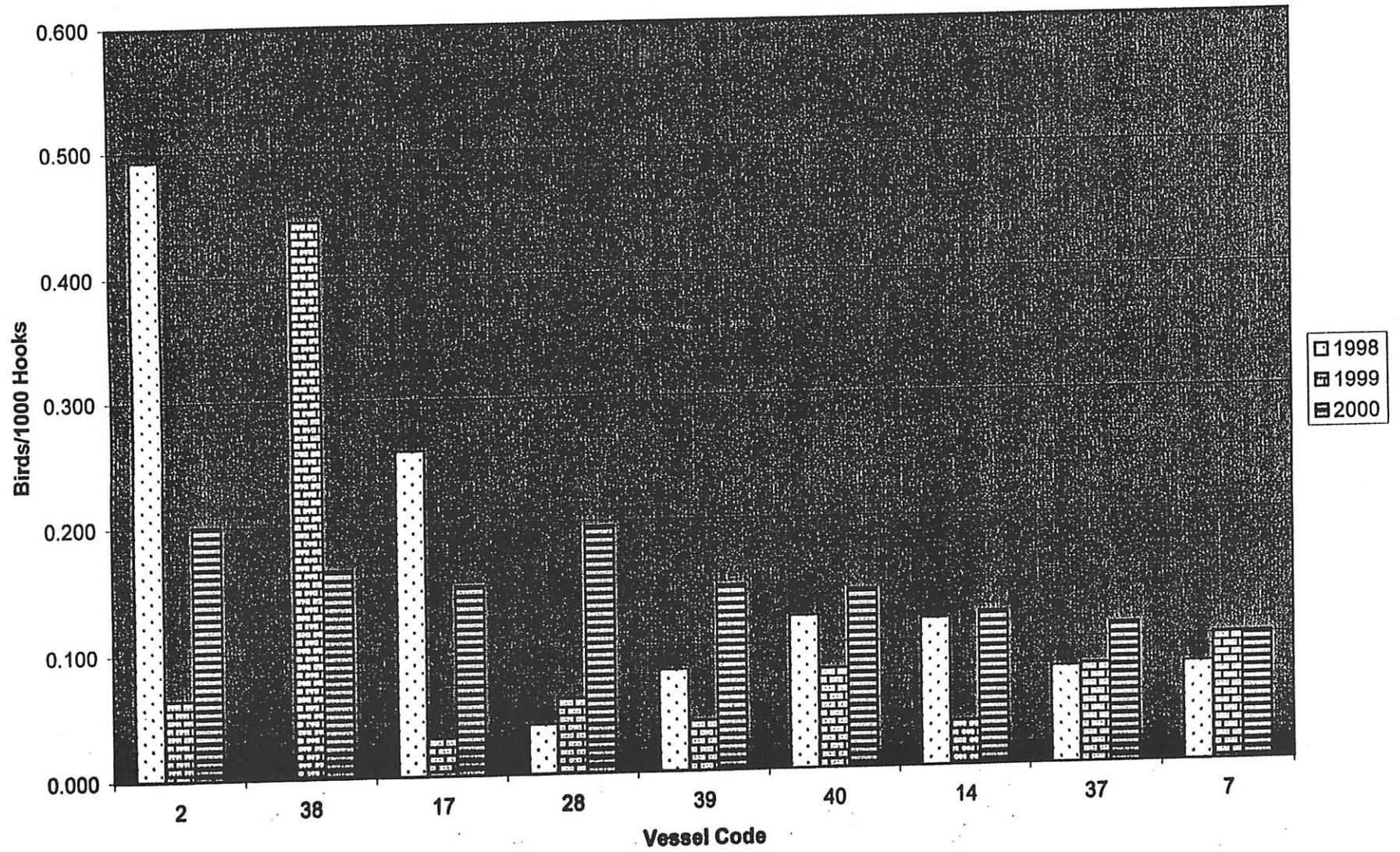


Table 2 Halibut Bycatch Data
Pacific Cod Target Fishery

Vessel Code	1998 Rate	1999 Rate	2000 Rate
32		178.7	173.1
14	245.7	45.6	138.3
29	65.5	41.8	123.6
33	54.7	76.4	111.1
27	162.9	35.8	110.6
7	64.6	52.5	106.6
39	56.6	75.2	105.4
12	77.7	57.5	100.4
22	24.9	39.2	88.2
17	47.9	181.3	87.0
35	136.5		85.1
40	40.6	61.7	84.2
16	54.8	56.8	78.2
21	48.9	95.6	78.0
30	35.6	33.2	70.5
38		258.2	69.3
23	48.8	48.3	65.8
37	74.9	66.8	64.0
31	84.2	60.0	59.6
28	67.4	44.4	55.9
25	89.1	61.4	55.7
1	64.2	24.4	54.9
2	37.9	43.1	52.5
13		7.4	51.3
5	65.5	29.8	50.2
4	49.2	50.0	49.7
19	64.6	94.2	49.3
18	87.1	30.0	47.1
10	39.8	49.9	41.8
36	107.4	101.4	40.1
6	28.9	37.9	38.8
42	97.8	104.0	37.4
15	48.6	34.8	36.6
34	53.7	28.5	25.9
11	80.1	33.9	23.3
41	44.7	13.0	18.0

Figure 4. Bird Bycatch - Group C



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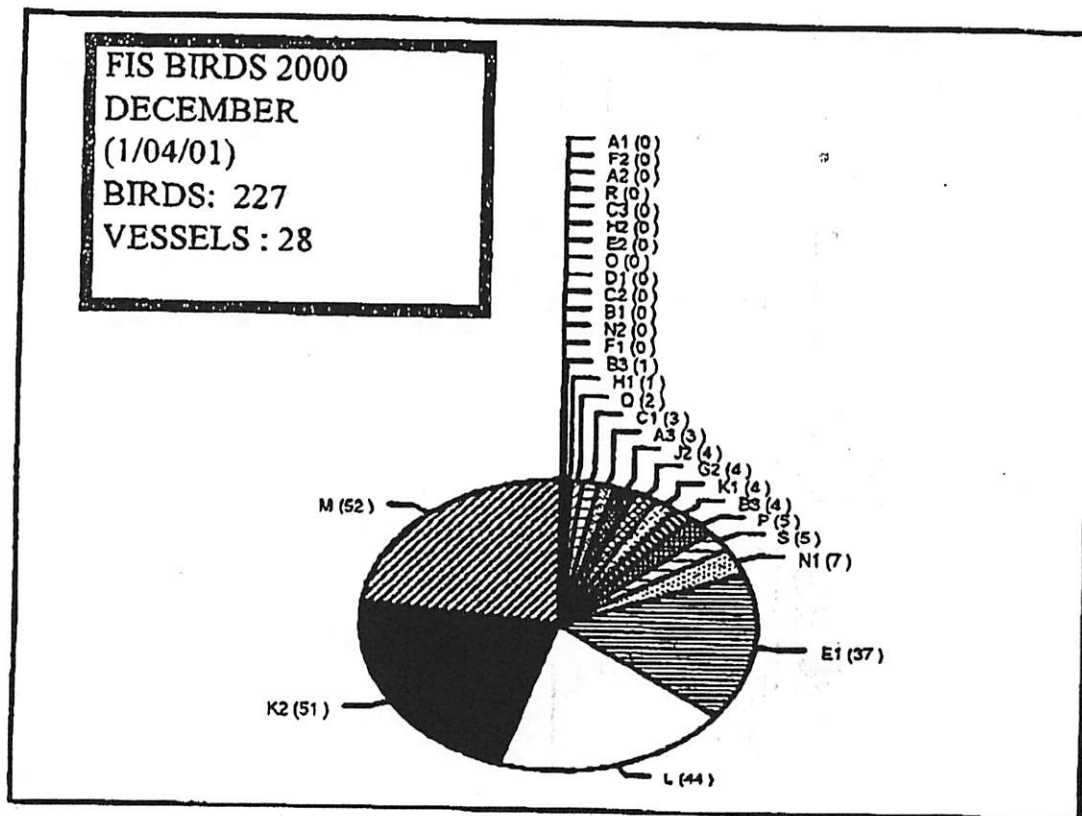
TO: PARTICIPANT LONGLINE MONITORING PROGRAM
 FM: JANET SMOKER, FIS
 DATE: JANUARY 4, 2001

This is the final bird report for December. In December 1999, 86 birds were taken by the 7 boats participating in CDQ fishing. Through December 31 this year, 227 birds have been reported. Out of 28 boats with observers, 12 had no birds this month, 16 boats had 1 to 52. See pie chart below. I will work on an annual overview as time permits.

Birds in December include 78 northern fulmar, 107 gulls, and 8 shearwaters. No albatross were taken.

I have received observer data from only 4 boats so far in 2001. NMFS just posted the first effort report for 2001. 22 Hook-and-line CPs are in the following areas:

- 509- 6
- 513- 4
- 516- 1
- 517- 2
- 521- 6
- 543- 1
- 610- 2



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FEB - 5 2001

N.P.F.M.C

F/V Masonic
Mark S. Lundsten

1/29/01

Dave Benton, Chairman
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

Dear Dave,

As you amend the current seabird regulations for the longline fisheries for halibut and sablefish please consider the following techniques we have used on the Masonic:

A – We drag two streamer lines, one on each side of the gear being set, with streamers about ten - twelve feet apart, each reaching to the water. Each of the two lines has a float or small buoy attached that extends behind the boat about 150-200 feet.

B – Our gear is weighted with 3/4 lb. weights every 60 feet (10 fathoms).

We have been using these techniques for the last few years and have almost no bird bycatch at all. If you extrapolate our catch of birds, based on our catch of fish, across the whole IFQ fleet, then the bird bycatch rate for all of the halibut and sablefish TACs would be 100 birds per year or less, most all of those being Northern fulmars. A number of other fishermen have come up with very similar systems (two streamer lines and lots of small weights on the groundline) and have had virtually identical results

Further, I would like to suggest the following amendments to the current regulations:

1 – Require the use of bird deterrents day or night.

2 - Require that hooks be removed from any sablefish heads that are discarded and that any bait be removed from hooks that are discarded.

3 – Make no regulations for the IFQ fisheries about boat lighting, the discharge of offal, or lining tubes.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Lundsten".

Mark S. Lundsten