PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM B - Reports

	NAME (PLEASE PRINT)	AFFILIATION
1 ✓	Bob Alverson (VMS)	FVA - Seattle
2 ✓	Gerry Merrigan (VMS)	SELF
3 ✓	Teressa Kandianis Shaun Gehan	FT Legacy
4 ✓	Dave Woods	US Seafoods
5 ✓	Thorn Smith	NPKA
6 ✓	Cora Crome	PVOA
7 ✓	Joni Thomson	ACC
8 ✓	Ed Luttrell / Lori Swanson	GFF
9 ✓	Chris Mecum	
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person " to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

NATIONAL MARINE FISHERIES SERVICE

Management Report

to the NPFMC

June 3, 2005

NOAA Fisheries

National Marine Fisheries Service

Status of FMP Amendments
May 26, 2005

FMP Amendment Status: Actions Since April 2005 Council Meeting	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed FMP Amendment Notice of Availability Published	Proposed Rule Published in Federal Register	Final Rule Published in Federal Register
Amendment 10 (Scallop) – Change dredge restrictions for LLP Secretarial Decision Day: June 24, 2005		PR: 11/3/04	PR: March 16, 2005	**March 24, 2005** **70 FR 15063** **Comment period ended May 23, 2005**	**April 13, 2005** **70 FR 19409** **Comment period ends May 31, 2005**	
Amendments 62/62: Single Geographic Location and AFA housekeeping	Oct 2002	PR: 10/15/04				
Amendments 65/78 (BSAI) 65/73 (GOA) 12/16 (KTC) 7/9 (SCAL) 8/7 (SAL) – Habitat Areas of Particular Concern and Essential Fish Habitat	February 2005	**PR: 4/20/05**				
Amend 11 to Scallop FMP - housekeeping	April 2005					
Amend. 71a (BSAI): CDQ non-fisheries investments	June 2002	PR: 9/12/04				
Amend. 71b (BSAI): CDQ oversight	June 2002					
Amendment 72 (GOA): Remove flatfish IR/IU provisions	April 2003					
Amendment 79 (BSAI): Groundfish Retention Standard	June 2003	PR: 3/30/05	**PR: May 26, 2005**			
Amendments 83/75 Fishery Management Plan housekeeping	December 2004	NOA: 2/8/05	NOA: March 15, 2005	March 24, 2005 70 FR 15067 Comment period ended May 23, 2005		

Status of Regulatory Amendments
May 26, 2005

Regulatory Amendment Status: Actions Since April 2005 Council Meeting	**Date of Council Action**	**Start Regional Review of Rule**	**Transmittal Date of Rule to NMFS Headquarters**	**Proposed Rule in *Federal Register***	**Final Rule Published in *Federal Register***	
Groundfish Regulations						
Revise species codes (Table 2)	NMFS	PR: 10/10/03				
Upgrade OCS software and hardware req.	NMFS	PR: 5/27/05				
MMPA List of Fisheries for 2005	NMFS			January 5, 2005 70 FR 776 Extension of comment period through March 4, 2005		
Halibut Regulations						
Halibut charter boat IFQ	April 2001; October 2001	PR: 2/23/05				
Area 4CD Quota Share Allowance	December 2004	PR: 3/4/05	**PR: April 14, 2005**	**May 5, 2005** **70 FR 23829** **Comment period ends June 6, 2005**		
Halibut IFQ Omnibus IV	December 2004					
Subsistence Halibut II	April 2002; Oct. 2002	PR: 1/28/04 FR: 1/10/05	PR: May 18, 2004 FR: March 16, 2005	July 9, 2004 69 FR 41447 Comment period ended August 9, 2004	**April 1, 2005** **70 FR 16742** **Effective May 2, 2005**	

Annual Specifications EA

A new analytical framework for the 06-07 harvest specs EA that is more applicable to proposed action, better complies with NEPA, and provides decision makers and the public with an improved evaluation of the environmental, social, and economic effects of the proposed action and its alternatives.

Annual Specifications EA Timeline

September	First draft, with TAC projections based on September Plan Team OFL and ABC recommendations. Prepared in order to support Council deliberations in October
October	Revised in light of Council's October meeting specifications recommendations. Prepared in order to accompany proposed rule.
November	Revised in light of the November plan team OFL and ABC recommendations. Prepared in order to support Council deliberations in December.
January	Revised in light of Council's December specifications recommendations. Prepared in order to support Secretarial decision-making

Amendment 79 Objectives

- Reduce discards and increase utilization, to the extent practicable, in Bering Sea groundfish fisheries.
- Increase groundfish catch retention by non-AFA trawl catcher processors ≥125 ft through a stepwise increase in an annual Groundfish Retention Standard (GRS).

GRS

The annual percentage of groundfish catch a vessel has retained is calculated as:

The annual round weight equivalent of groundfish product retained divided by the total annual groundfish catch weight, expressed as a percentage.

GRS	
GRS Schedule	**Annual GRS**
2005	65%
2006	75%
2007	80%
2008	85%

Proposed GRS Monitoring Requirements

- Observers: all hauls must be available to be sampled by an observer. 2 observers or alternative processing plan.
- Catch weighing: all catch caught must be weighed on a NMFS-approved scale.
- Observer Sample Station: vessels must provide a NMFS-approved observer sample station.

Proposed GRS Monitoring Requirements (Cont)

- Additional Monitoring Requirements:
  - No mixing of hauls.
  - Vessels must maintain monitoring standards if fishing in GOA, or offload all product from BSAI.
  - Observers must be able to sample all catch from a single point.

Amendment 79 Schedule

Date	Proposed and Final rule milestones	FMP milestones
May 26	Council transmits FMP amendment and PR package for Secretarial review	
June 2		NOA published/start of 60 day public review
June 16	PR published/start of 45 day comment period	
August 1	End of PR 45 day comment period	End of 60 day public review on NOA; start 30 day decision period
August 24	Begin Regional review of FR package	
August 31		Decision date for Secretarial Secretary
October 7	Send FR package to HQ	
October 31	FR published	
January 20	GRS effective date	

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA
B2 Supplemental
June 2005

May 27, 2005

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. Fourth Avenue, Suite 306
Anchorage, Alaska 99501

Dear Madam Chair,

On November 29, 2004, we provided you with a draft schedule for the preparation, approval process, and implementation of the groundfish retention standard (GRS) under Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area. Secretarial review of Amendment 79 was initiated on May 26, 2005. I am attaching a revised schedule, which pending Secretarial approval, continues to provide a GRS effective date by January 20, 2006.

As we indicated in our November 2004 letter, the proposed rule implementing a GRS for the non AFA trawl catcher processor sector would establish a 2006 GRS of 75 percent for the first year of the program. This GRS level corresponds with the Council's original recommended schedule for a stepwise increase of the annual GRS. Although the Council had recommended that the GRS program be implemented in 2005 at a 65 percent level, this level essentially reflected the fleet wide status quo for groundfish retention rates. Using the Council's recommended 2006 rate of 75 percent rather than a first year rate of 65 percent could pose a challenge for some vessels. Thus, we have specifically solicited public comment on first year implementation of the GRS at 75 percent. We appreciate the Council's interest in reviewing this issue during its June 2005 meeting and providing subsequent written comment once the comment period on the proposed rule commences in mid June.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

Schedule for BSAI Amendment 79: Groundfish Retention Standard
May 26, 2005

Date	Milestones for Proposed and Final Rule	Milestones for the FMP Amendment
May 26	Council transmits FMP amendment and proposed rule package for Secretarial review	
June 2		FMP amendment notice of availability (NOA) published and start of 60-day public review
June 16	PR published/start 45 day public comment period	
August 1	End of PR 45 day comment period	End of 60 day public review on NOA; start 30 day decision period
August 24	Begin Regional review of FR package	
August 31		Decision date for Secretarial approval, disapproval or partial approval of FMP amendment.
October 7	Send FR package to HQ	
October 31	FR published	
January 20, 2006	GRS effective date	

Lew Queirolo
NMFS B-2

An Overview of Costs of EFH-HAPC VMS Requirement

Prepared by
Drs. Lewis Queirolo and Ben Muse
National Marine Fishery Service Alaska Region
NPFMC June 2005 Meeting

The VMS requirement

- In the GOA, vessels with an **FFP** or **FCVP**, operating with bottom contact gear onboard, whether operating in Federal or State waters, must carry and operate VMS
- In the AI, vessels with an **FFP** or **FCVP**, operating in Federal or State waters, must carry and operate VMS

2

Per boat cost assumptions for newly covered vessels

- Acquisition costs (purchase, installation, connection fee) of $1,550
- Transmission costs of $74/mo. for operational months, $5/mo. for non-operational months (avoids new connection fee)
- Annualized "repair" costs - $47 for vessels ≥32' LOA; $93 for all others (may overstate cost for <32' class)

3

Per boat cost for covered vessels already with VMS

- No installation costs
- Transmission costs of $155/mo. when operate with "bottom contact gear" for species other than Alaska pollock, Pacific cod, and Atka mackerel
- No new annualized "repair" costs

4

AI vessels subject to VMS requirement

- 168 vessels will be subject to requirement
  - 96 already have VMS
  - 72 must acquire VMS
- Estimated average cost per boat
  - Acquisition costs: $1,550 (72 vessels)
  - Transmission costs ~ $770 (168 vessels)
  - Annualized repair costs ~ $21 (168 vessels)

5

GOA vessels subject to VMS requirement

- 928 vessels will be subject to requirement
  - 293 already have VMS
  - 635 must acquire VMS
- Estimated average costs per boat
  - Acquisition costs: $1,550 (635 vessels)
  - Transmission costs ~ $530 (928 vessels)
  - Annualized repair costs ~ $37 (928 vessels)

6

Small entity impacts

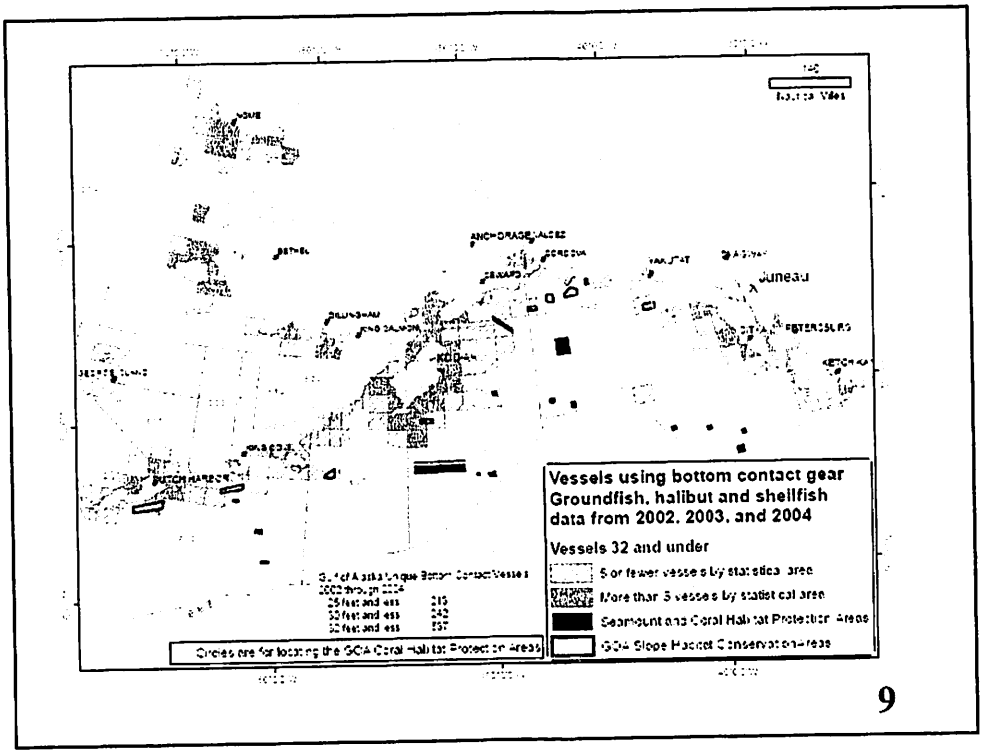
- In the AI, 124 of 168 boats appear to be "small entities", within the meaning of the RFA (directly regulated w/ $\leq$ $3.5 million annual gross revenues); 53 already carry VMS, 71 must acquire it
- In the GOA, 865 of 928 boats appear to be "small entities"; 230 already carry VMS, 635 must acquire it

7

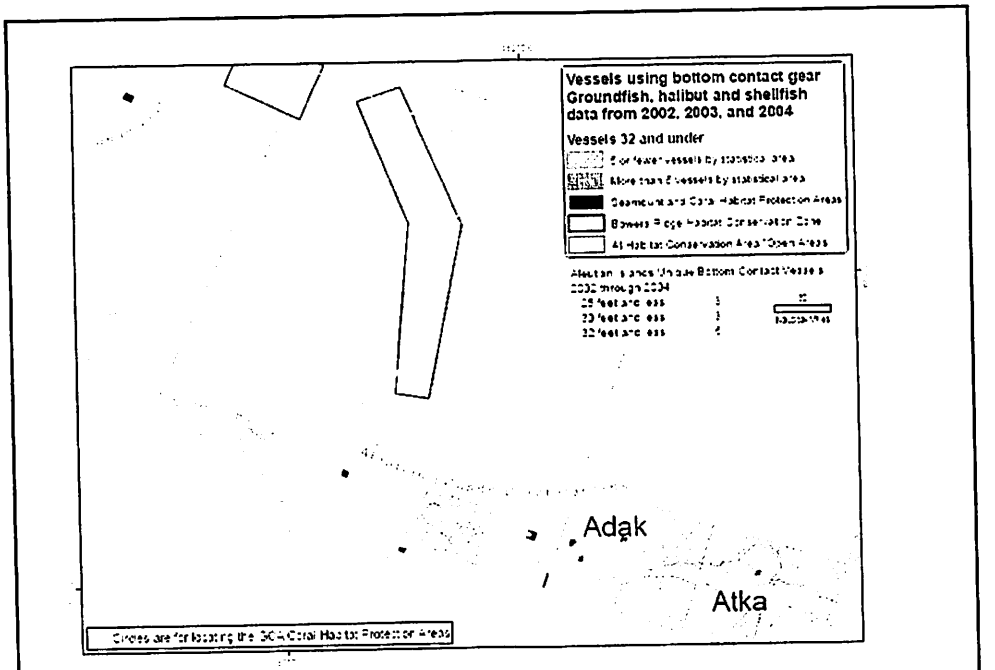
Aggregate revenues, and costs of adding VMS, in GOA by size classes

Variable	All vessels	≤32	≤30	≤25	Unknown
Count of vessels (2003)	928 (install on 635)	84 (install on 76)	28 (install on 28)	15 (install on 15)	11 (install on 11)
Average revenues all vessels (large & small)	$580,000	$103,000	$17,000	$5,000	$20,000
Total acquisition costs for vessels adding VMS	$984,000	$118,000	$43,000	$23,000	$17,000
Total annual transmission costs all vessels (large & small)	$489,000	$31,000	$7,000	$3,000	$6,000
Total annualized repair costs all vessels (large & small)	$34,000	$7,800	$2,600	$1,400	$1,000
Total Gross Revenues from all sources	$538,200,000	$8,700,000	$476,000	$75,000	$220,000

8


Juneau
Vessels using bottom contact gear
Groundfish, halibut and shellfish
data from 2002, 2003, and 2004
Vessels 32 and under
5 or fewer vessels by statistical area
More than 5 vessels by statistical area
Seamount and Coral Habitat Protection Areas
GOA Slope Habitat Conservation Areas
Circles are for locating the GOA Coral Habitat Protection Areas

9


Vessels using bottom contact gear
Groundfish, halibut and shellfish
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Vessels 32 and under
Seamount and Coral Habitat Protection Areas
Adak
Atka
Circles are for locating the GOA Coral Habitat Protection Areas

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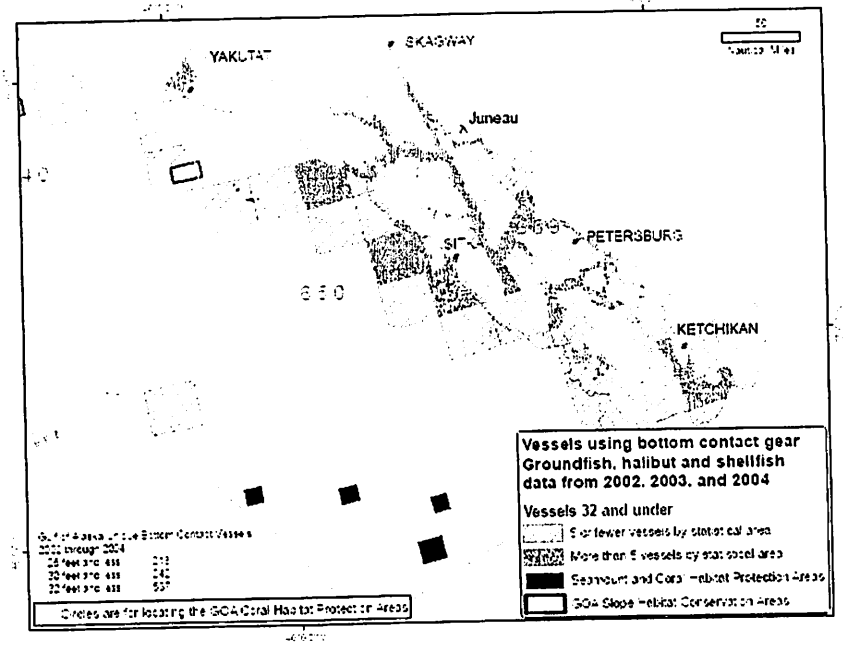

11

Potential GOA exemptions[1]

Group	Count	Ave. GR	Ave. trans	Ave. repair
≤ 32	84 (8 have VMS)	$103,000	$372	$93*
≤ 30	28	$17,000	$252	$93*
≤ 25	15	$5,000	$203	$93*
Dredge	2	Confid.	$578	$47
Dinglebar	4	$43,000	$509	$75

[1] *Capital outlay to add VMS assumed to be $1,550 per vessel*

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What about the commercial fishing fleet that operates *ONLY* in State waters?

- Would these operators be subject to the EFH/HAPC VMS requirement?

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Small vessels fishing ONLY in State waters

- If boat holds an **FFP** or **FCVP**, it is subject to the EFH/HAPC VMS requirement
- May opt to avoid VMS requirements by surrendering its **FFPs/FCVPs**
- One cannot predict who will, and who will not, choose this option

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Upper-bound example

- Potentially, 558 small boats, *currently* operating only in State waters (2003), could choose to acquire and operate VMS
- This fleet's average gross revenues were $161,000
- Assume $1,550 acquisition cost; $400 annual transmission costs; $60 annualized repair cost
- Total expenditure per vessel (first year) **$2,010**
- Aggregate (first year) program cost **$1,121,580**

15

Vessel size composition of the State water ONLY 558

- **< 15' LOA – 1**
- **15' to < 25' – 89**
- **25' to < 35' – 204**
- **35' to < 45' – 189**
- **45' to < 55' – 61**
- **55' to < 65' – 12**
- **65' to < 75' – 1** **[one boat unaccounted for]**

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Example Summary

- Recall, ***ONLY*** vessels holding an **FFP** or **FCVP** are subject to this VMS rule
- It is NOT correct to attribute voluntary investments in VMS to this management action
- Voluntary investment is evidence that perceived benefits of having VMS onboard and operating, exceed the private cost
- None of the 558 boats, in this example, would be ***required*** to acquire and operate VMS, unless they chose to fish in Federal waters

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Enforcement Committee Meeting - excerpt from draft minutes, June 2, 2005

will be revised

Jane DiCosimo

Dr. Lew Queirolo presented estimated costs of the proposed VMS requirements for GOA and AI EFH-HAPC. The committee noted that some of 168 AI vessels might be the same as some of the 928 GOA vessels (and should not be totaled). It also noted that the 558 small vessels that operate only in State waters would either have to comply with VMS or shed their Federal Fishing Permit (except an FFP is not required for the halibut fishery). The committee discussed the assumption that small vessels would have double the failure rate of VMS. The committee discussed that the selections for potential GOA exemptions for VMS requirements in the cost analysis were based on previous small boat exemptions in the regulations, although this may not be applicable due to the nature of the need for VMS (habitat protection).

NOAA Fisheries has expressed a strong recommendation that VMS is necessary to implement EFH-HAPC regulations. Linkage of VMS requirement to the FFP limits EFH-HAPC protection by potentially limits effectiveness in state waters).

Jeff Passer made general comments on the process and proposed regulations for VMS. Jeff referred to the Draft Council motion dated February 3, 2003 that called for "Under all alternatives, evaluate how VMS and/or a secure on-board tracking system may or may not improve enforcement." Jeff stated that he was disappointed when this analysis was not done, and it appeared that Enforcement had asked for VMS requirements late in the process. If the goal of these regulations is to protect EFH/HAPC, then prohibitions and enforcement measures should be applied to those vessels which have the ability to cause habitat damage. The proposed regulations apply only to Federally Permitted vessels. Allowing a fishery such as the ling cod dinglebar fishery to be exempted from the regulations does not appear to be a measure which would protect the areas. An example given was citing a halibut longline fisherman who is fishing ½ mile outside the Fairweather HAPC for not carrying VMS, while he watches a dinglebar vessel drag its gear lawfully through the HAPC.

NOAA Enforcement and the US Coast Guard supports VMS in all fisheries. This extends beyond HAPC protection. There are gains in enforcement efficiencies from VMS due to increasing regulatory complexity, expansive closed areas, and longer fishing seasons resulting from various rationalization programs. In addition, the impact of non-compliance with EFH/HAPC is extreme when compared with other reasons for closures. Coast Guard's recommendations to change the shape of the closed areas should not be interpreted that it has the resources to enforce the HAPC closures in southeast without VMS.

NOAA Fisheries does not enforce closures in state waters until the State of Alaska takes complementary action nor does it manage the ling cod fishery; however it does manage all vessels in federal waters in relation to marine fisheries under a different type of authority.

The Enforcement Committee recommended its support of the proposedVMS requirement for EFH-HAPC protection. The committee recognized that the regulatory analysis concludes that there are additional costs to small vessels, but defers such economic decisions on small boat exemptions to the Council. The committee recognized that it has a safety concern with a small boat exemption, which may provide fishermen an economic incentive to fish on smaller, exempted vessels.

1. The committee recommended that the Council request that the Alaska Board of Fisheries adopt complementary habitat protection measures in Aleutian Islands area state waters, including VMS.
2. The committee recommended that VMS be applied to all vessels using bottom contact gear in federal waters of the GOA, including vessels participating in state managed fisheries (i.e., the dinglebar fishery for ling cod). Tying VMS only to vessels with a federal fisheries permit would not cover all vessels using bottom contact gear.

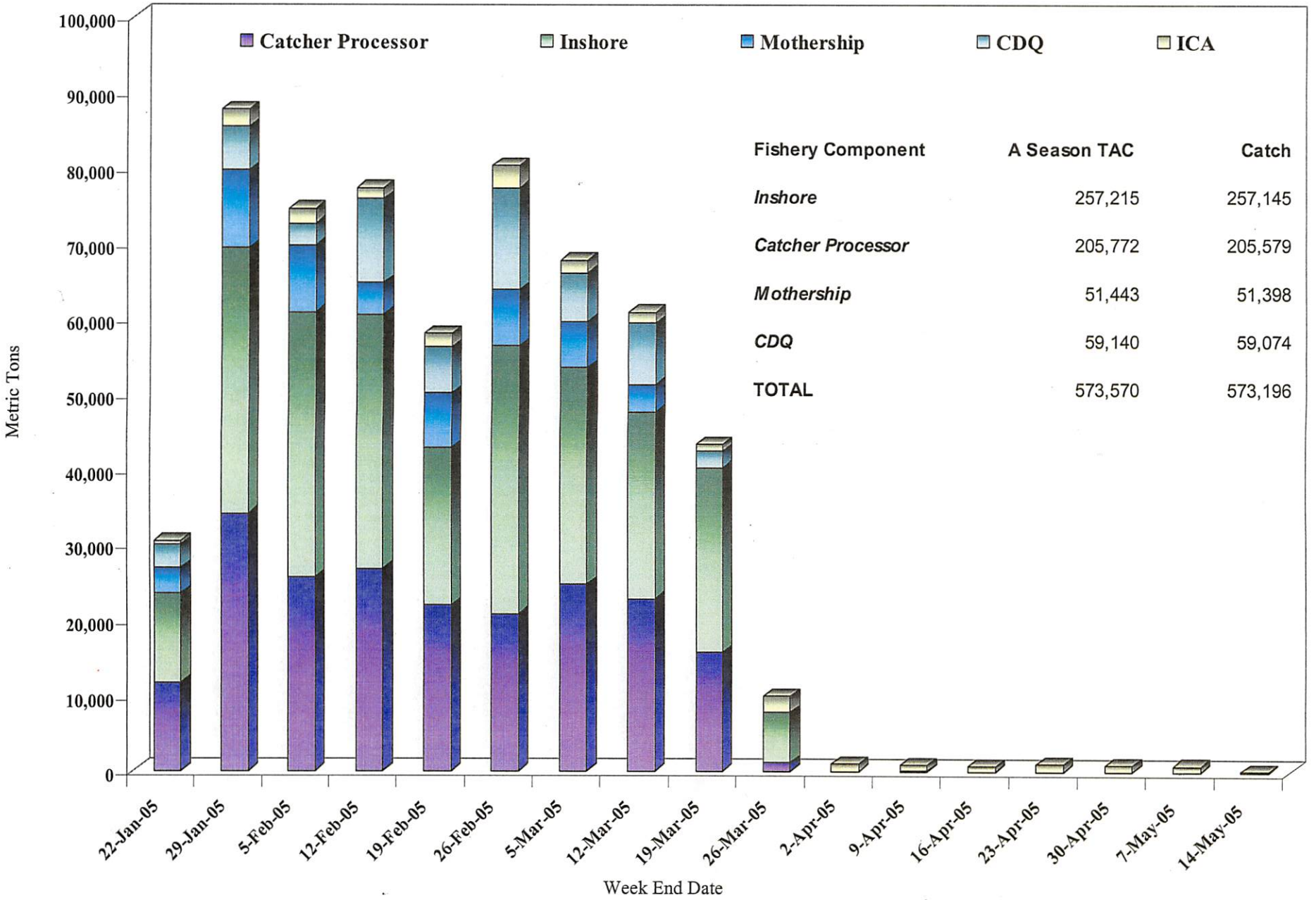
Alaska Region

National Marine Fisheries Service
Inseason Management Report
June 2005

Catch data are through May 21, 2005
Unless labeled it does not include CDQ

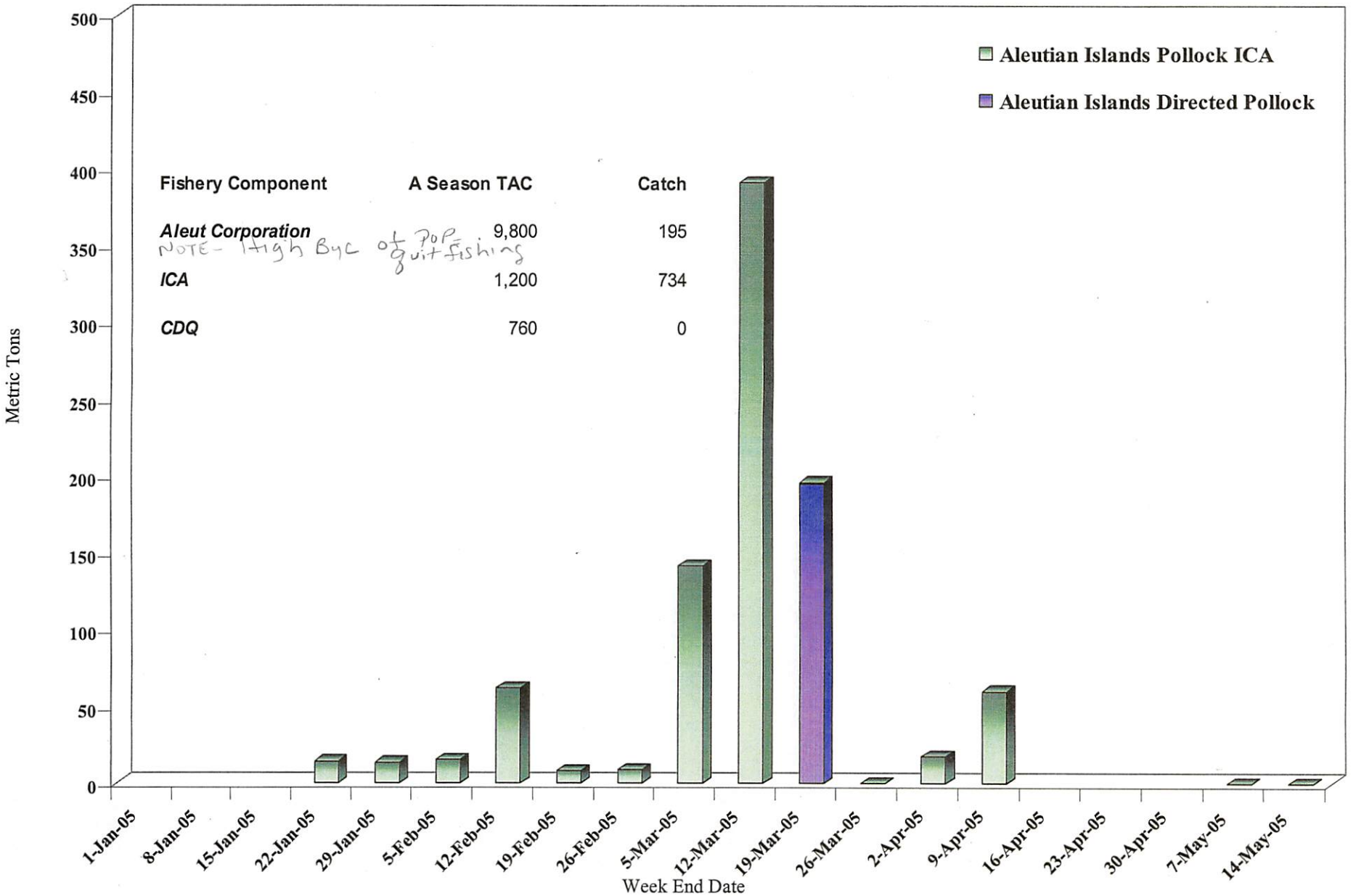
Andy Smoker
NMFS

2005 Bering Sea Pollock Catch by Week and Sector

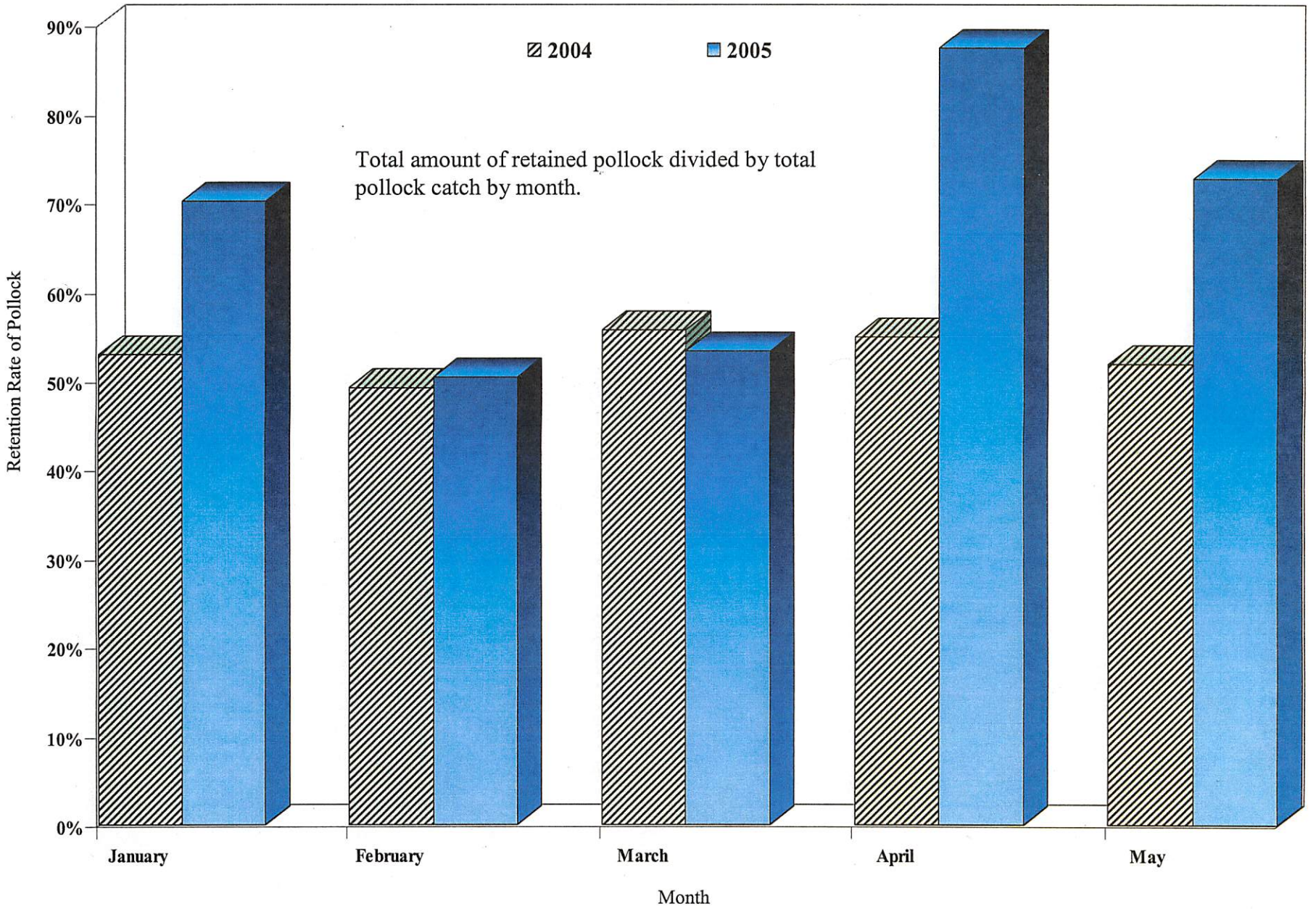


Fishery Component	A Season TAC	Catch
Inshore	257,215	257,145
Catcher Processor	205,772	205,579
Mothership	51,443	51,398
CDQ	59,140	59,074
TOTAL	573,570	573,196

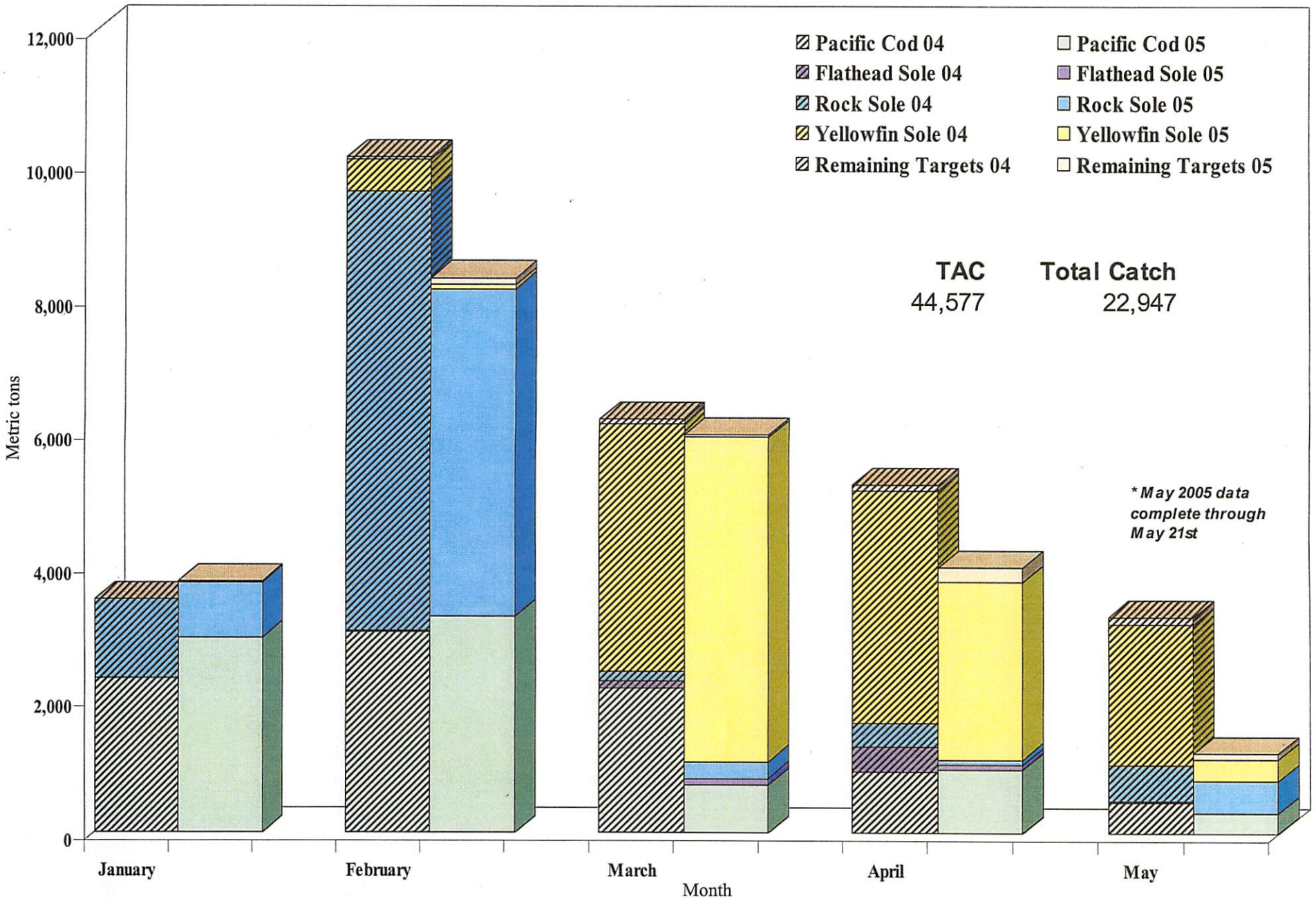
2005 Aleutian Islands Pollock Catch by Week and Sector



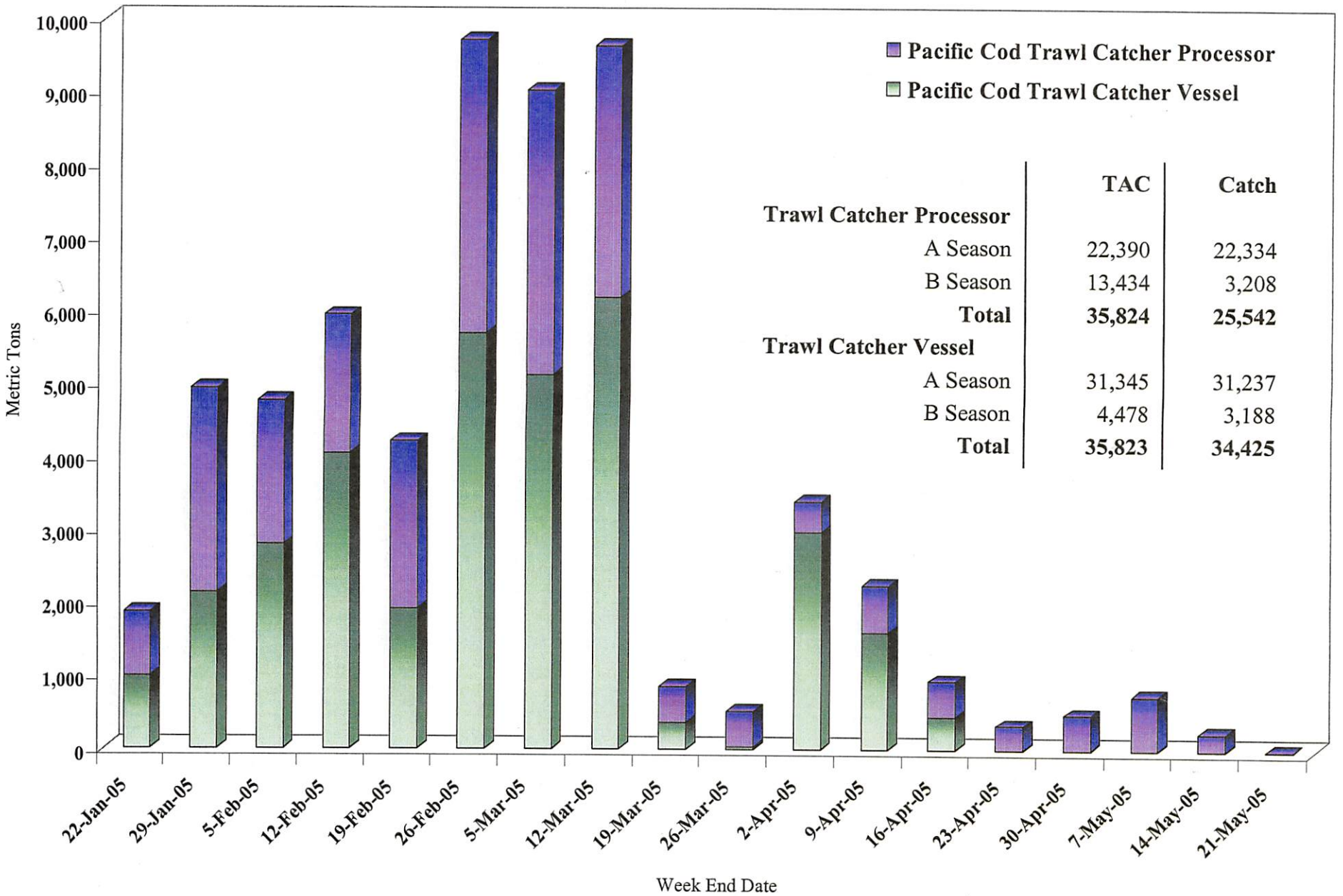
2004/2005 Retention Rate of Pollock by Non Pelagic Trawl Gear



2004/2005 Jan-May Bering Sea Incidental Catch of Pollock

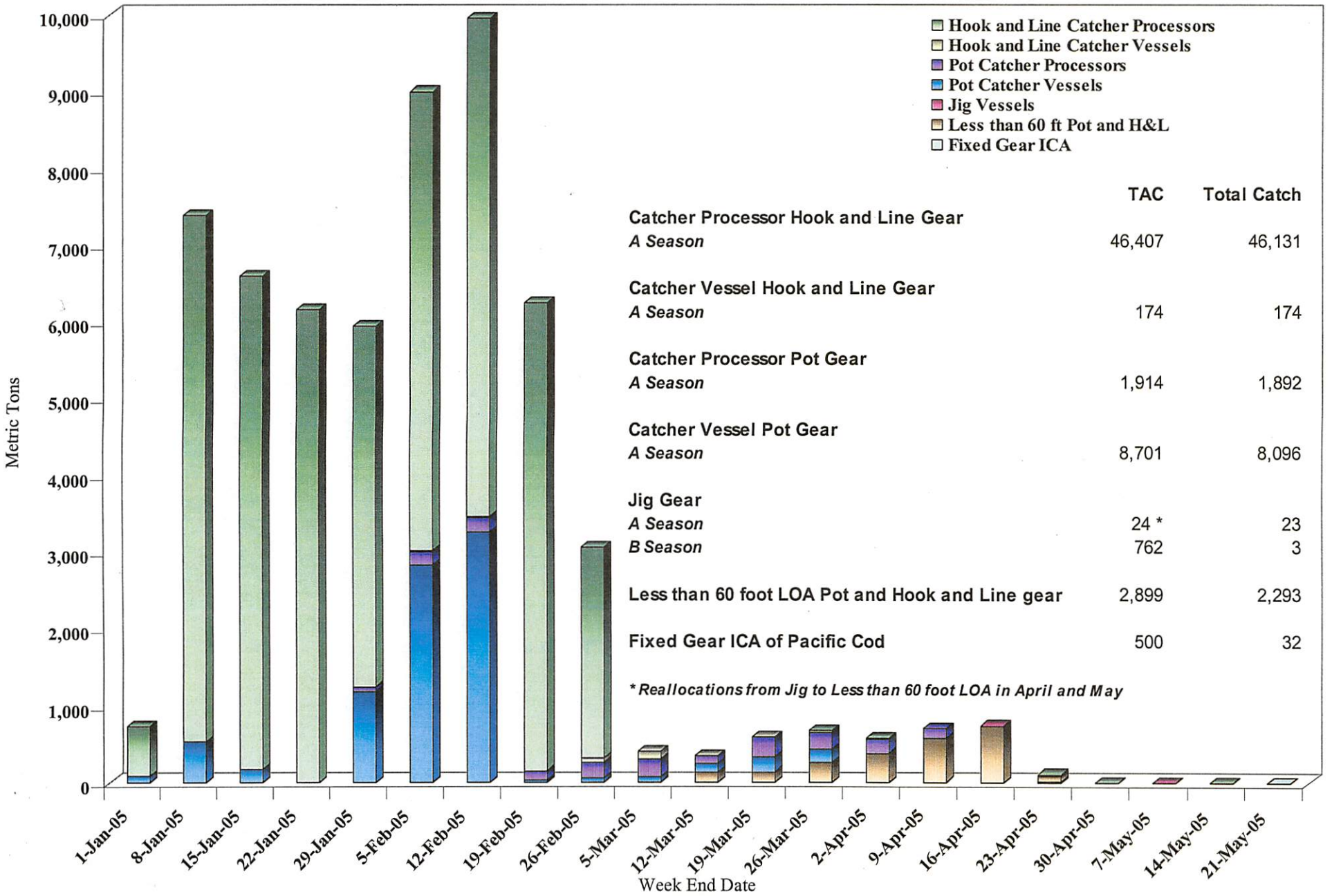


2005 BSAI Trawl Pacific Cod Catch



	TAC	Catch
Trawl Catcher Processor		
A Season	22,390	22,334
B Season	13,434	3,208
Total	**35,824**	**25,542**
Trawl Catcher Vessel		
A Season	31,345	31,237
B Season	4,478	3,188
Total	**35,823**	**34,425**

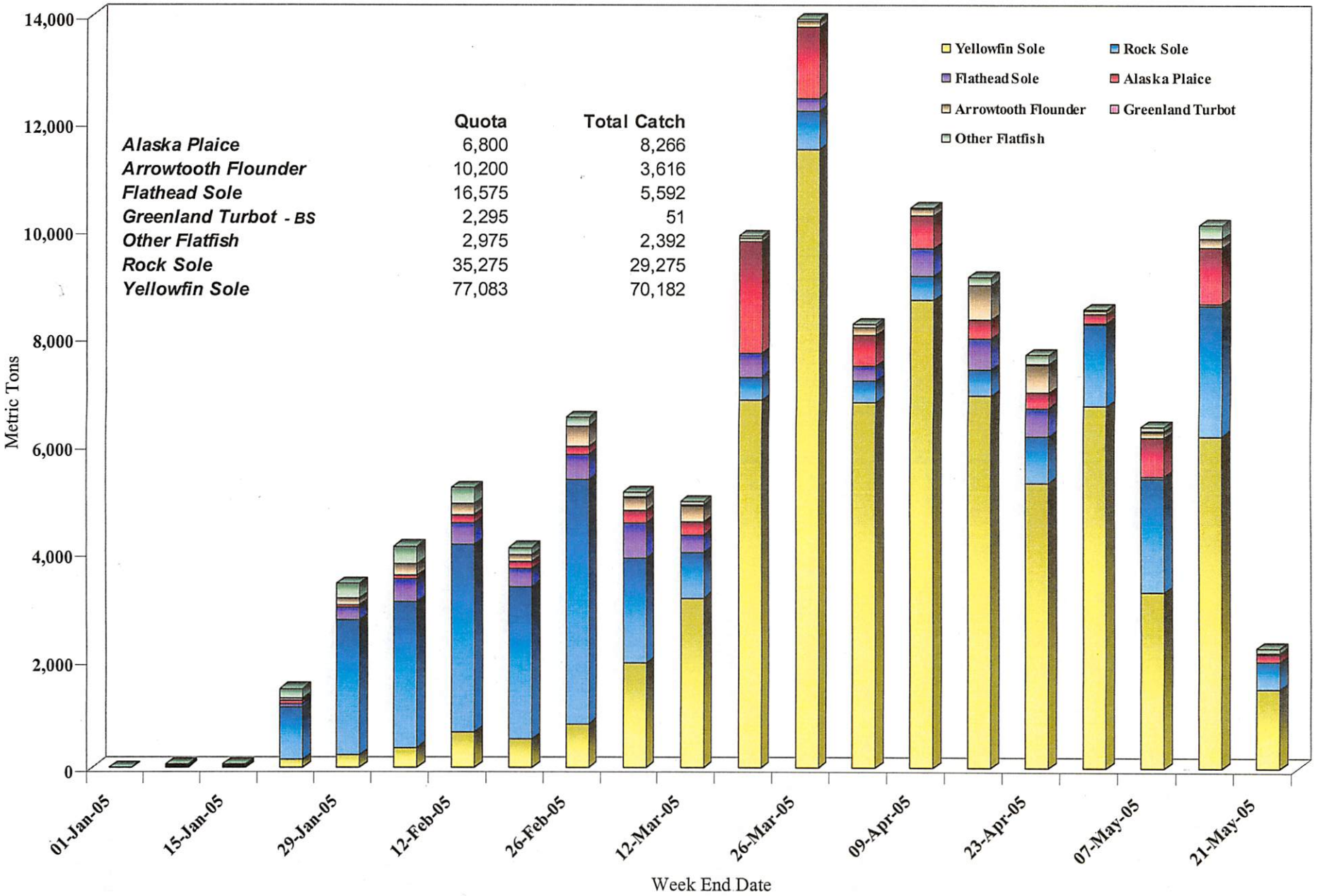
2005 BSAI Non-Trawl Pacific Cod Catch



	TAC	Total Catch
Catcher Processor Hook and Line Gear		
A Season	46,407	46,131
Catcher Vessel Hook and Line Gear		
A Season	174	174
Catcher Processor Pot Gear		
A Season	1,914	1,892
Catcher Vessel Pot Gear		
A Season	8,701	8,096
Jig Gear		
A Season	24 *	23
B Season	762	3
Less than 60 foot LOA Pot and Hook and Line gear	2,899	2,293
Fixed Gear ICA of Pacific Cod	500	32

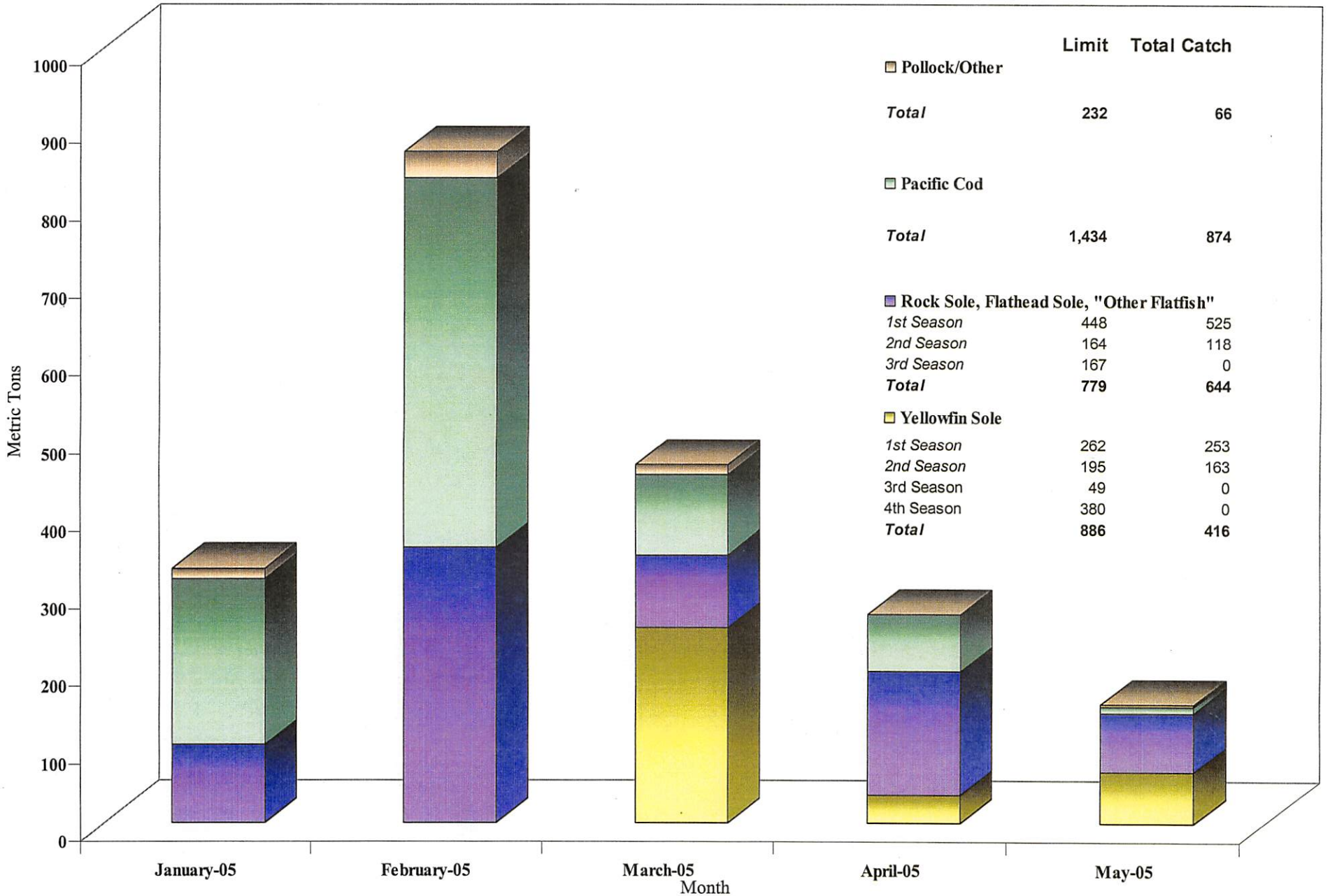
** Reallocations from Jig to Less than 60 foot LOA in April and May*

2005 BSAI Flatfish Catch by Week



	Quota	Total Catch
Alaska Plaice	6,800	8,266
Arrowtooth Flounder	10,200	3,616
Flathead Sole	16,575	5,592
Greenland Turbot - BS	2,295	51
Other Flatfish	2,975	2,392
Rock Sole	35,275	29,275
Yellowfin Sole	77,083	70,182

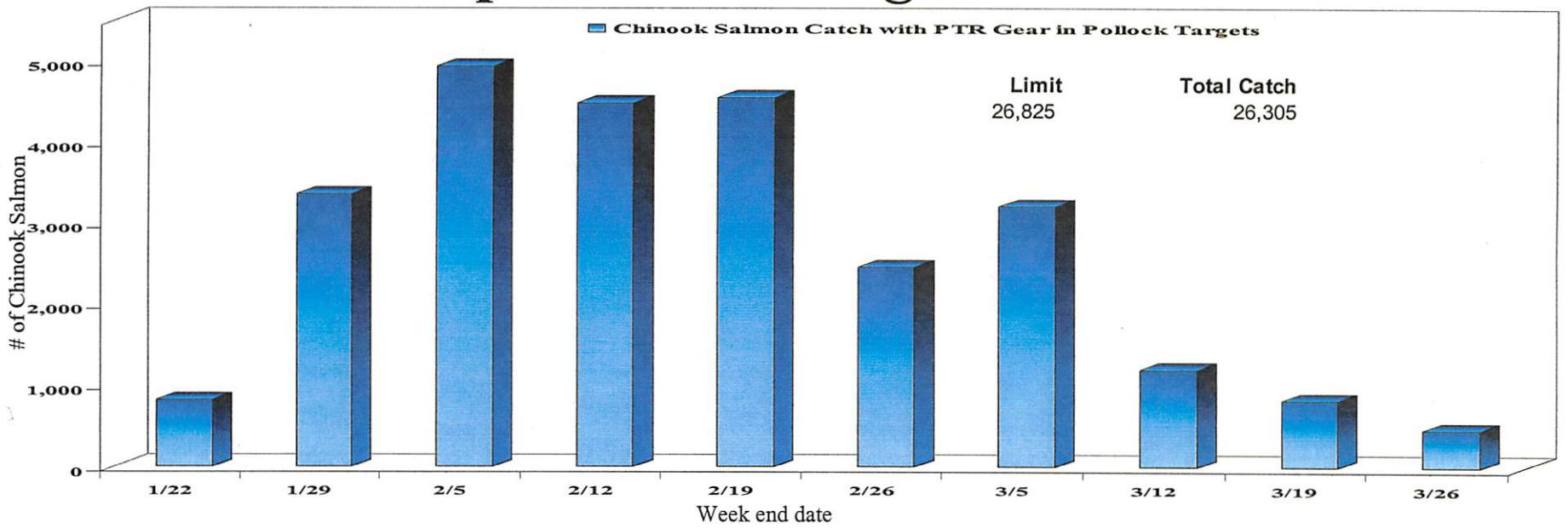
2005 BSAI Trawl Halibut Mortality By Target and Month



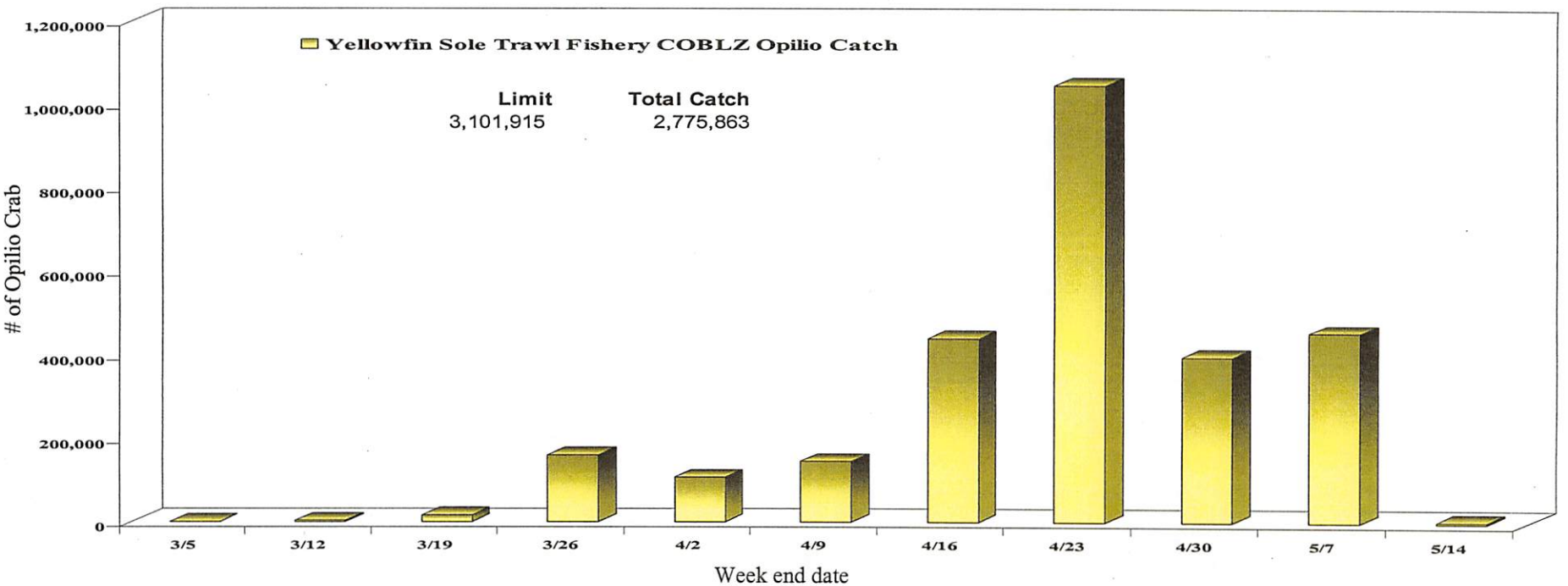
	Limit	Total Catch
Pollock/Other		
Total	**232**	**66**
Pacific Cod		
Total	**1,434**	**874**
Rock Sole, Flathead Sole, "Other Flatfish"		
1st Season	448	525
2nd Season	164	118
3rd Season	167	0
Total	**779**	**644**
Yellowfin Sole		
1st Season	262	253
2nd Season	195	163
3rd Season	49	0
4th Season	380	0
Total	**886**	**416**

2005 BSAI Opilio and Bering Sea Chinook Catch

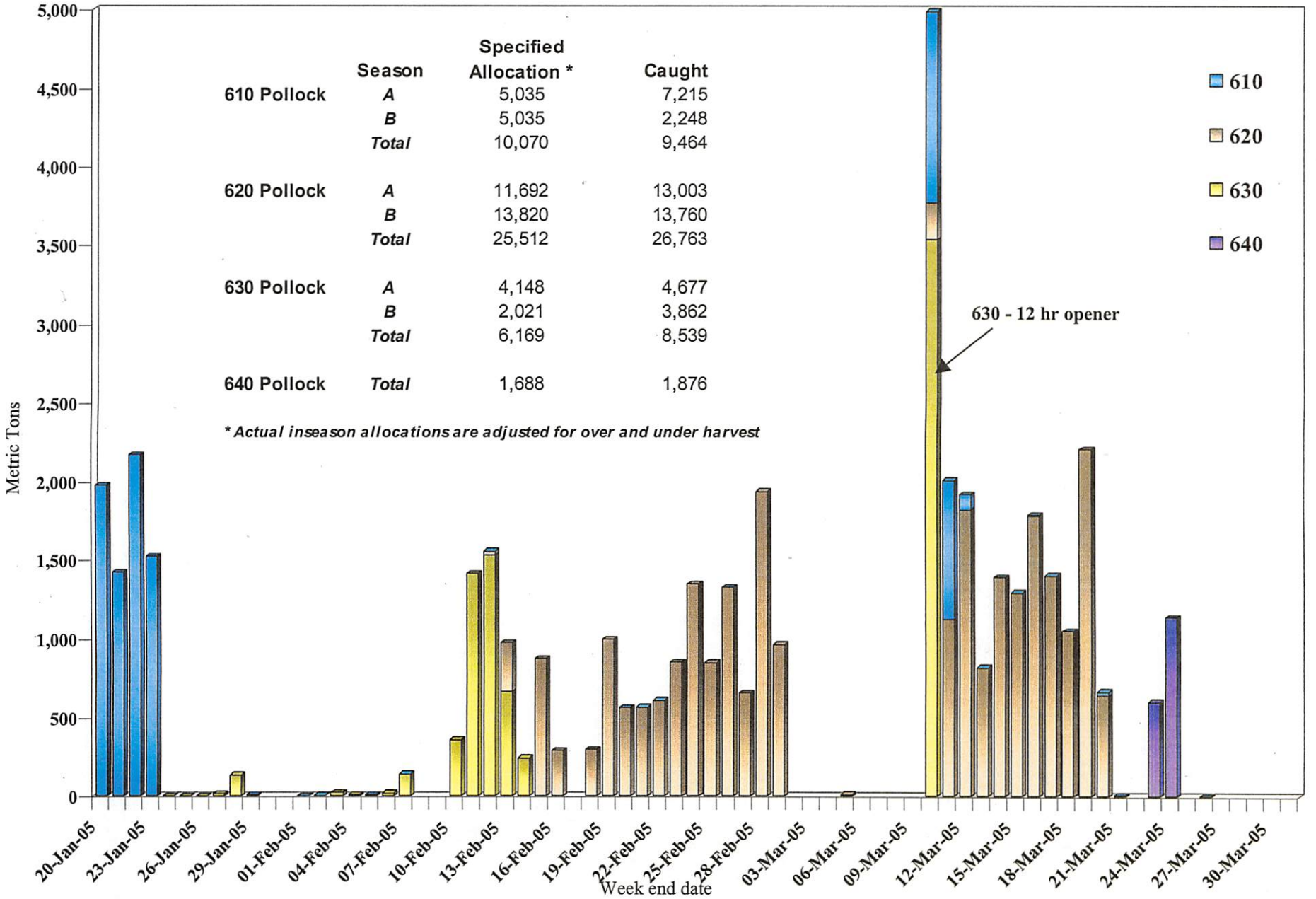
BS Chinook Salmon



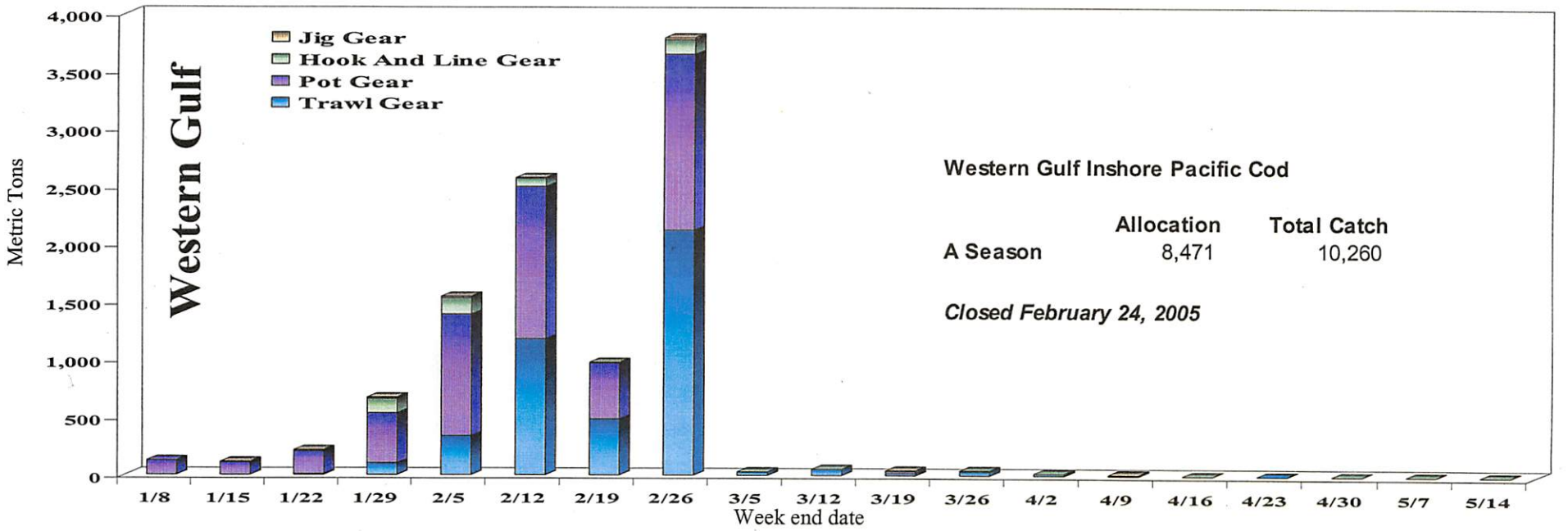
COBLZ Opilio Crab



2005 GOA Pollock Catch by Week and Area



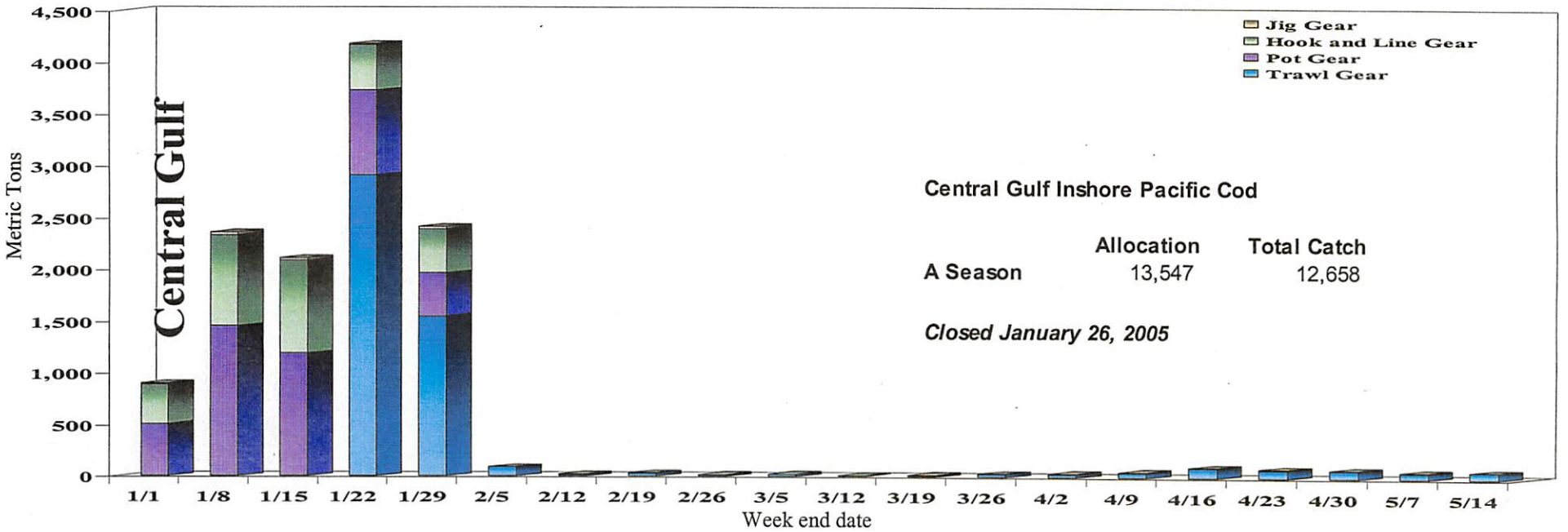
2005 GOA Inshore Pacific Cod



Western Gulf Inshore Pacific Cod

	Allocation	Total Catch
A Season	8,471	10,260

Closed February 24, 2005

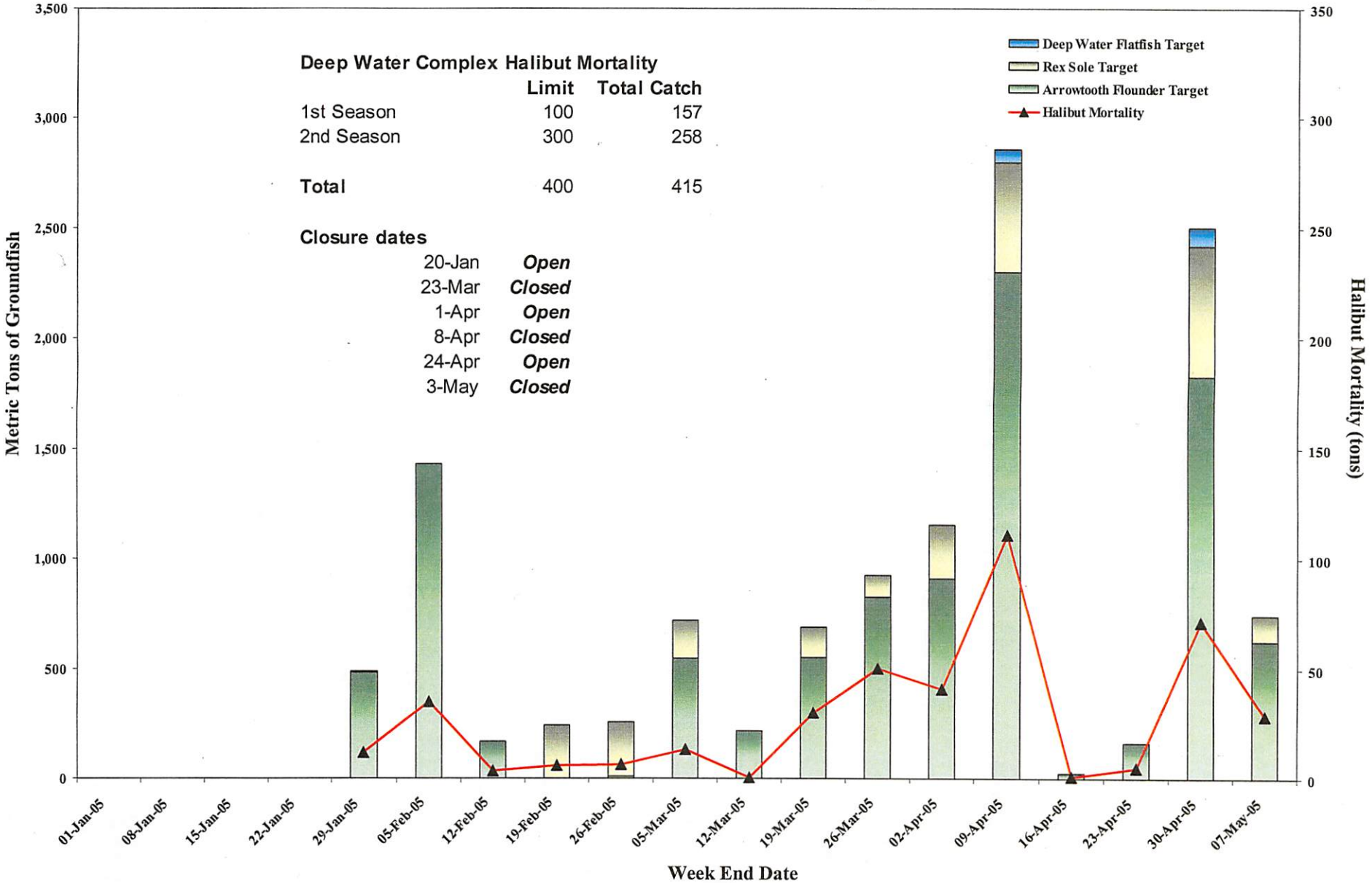


Central Gulf Inshore Pacific Cod

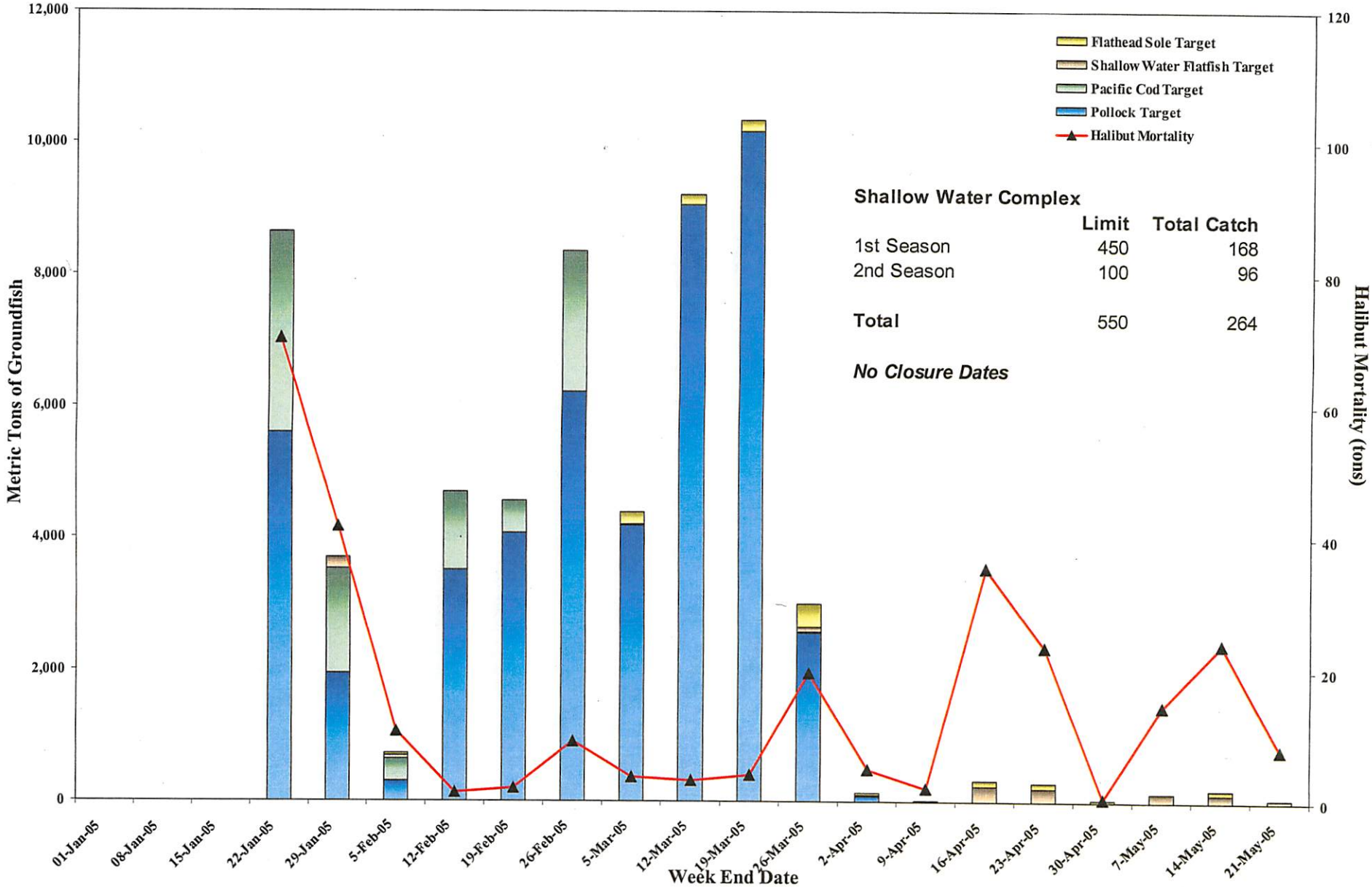
	Allocation	Total Catch
A Season	13,547	12,658

Closed January 26, 2005

2005 Trawl Deep Water Groundfish Catch and Halibut Mortality



2005 Trawl Shallow Water Groundfish Catch and Halibut Mortality



Andy Smoker NMFS

Bering Sea Aleutian Islands Catch Report
(excludes CDQ except as noted)
Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Bering Sea

Sea-sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Other Rockfish	34	426	392	8%	1
	Pacific Ocean Perch	168	1,190	1,022	14%	0
	Sablefish (Hook-and-Line and Pot)	92	976	884	9%	24
	Sablefish (Trawl)	31	1,037	1,006	3%	0
	Greenland Turbot	85	2,295	2,210	4%	31
X	Pollock, AFA Inshore	257,245	643,037	385,792	40%	0
X	Pollock, AFA Catcher Processor	205,578	514,429	308,851	40%	0
X	Pollock, AFA Mothership	51,398	128,607	77,209	40%	0
	Pollock, Incidental Catch, non-Bogoslof (includes CDQ)	23,131	44,577	21,446	52%	188
	Pollock, Incidental Catch, Bogoslof (includes CDQ)	0	10	10	0%	0

Aleutian Islands

Sea-sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Other Rockfish	91	502	411	18%	13
	Pacific Ocean Perch, Eastern	249	2,849	2,600	9%	0
	Pacific Ocean Perch, Central	188	2,808	2,620	7%	0
	Pacific Ocean Perch, Western	100	4,703	4,603	2%	0
X	Atka Mackerel, Eastern (Other Gear)	1,207	6,868	5,661	18%	53
	Atka Mackerel, Eastern (Jig)	0	69	69	0%	0
X	Atka Mackerel, Central	16,502	32,838	16,336	50%	0
X	Atka Mackerel, Western	2,661	18,500	15,839	14%	0
	Sablefish (Hook-and-Line and Pot)	657	1,572	915	42%	46
	Sablefish (Trawl)	0	557	557	0%	0
	Greenland Turbot	98	680	582	14%	15
X	Pollock	195	15,100	14,905	1%	0
X	Pollock, Incidental Catch (includes CDQ)	736	2,000	1,264	37%	0

Note: All weights are in metric tons.

Report run on: May 26, 2005 6:56 AM

Bering Sea Aleutian Islands Catch Report
(excludes CDQ except as noted)
Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Bering Sea Aleutian Islands

Sea-sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Alaska Plaice	8,911	6,800	-2,111	131%	648
	Arrowtooth Flounder	3,788	10,200	6,412	37%	151
	Flathead Sole	5,674	16,575	10,901	34%	63
	Northern Rockfish	1,198	4,625	3,427	26%	0
	Other Flatfish	2,745	2,975	230	92%	353
	Other Species	10,456	24,650	14,194	42%	193
X	Pacific Cod, Catcher Processor (Trawl)	25,844	44,779	18,935	58%	305
X	Pacific Cod, Catcher Vessel (Trawl)	34,425	44,779	10,354	77%	0
X	Pacific Cod, Catcher Processor (Hook-and-Line)	46,138	77,344	31,206	60%	7
X	Pacific Cod, Catcher Vessel (Hook-and-Line)	174	290	116	60%	0
X	Pacific Cod, Catcher Processor (Pot)	1,892	3,190	1,298	59%	0
X	Pacific Cod, Catcher Vessel (Pot)	8,703	14,502	5,799	60%	0
X	Pacific Cod (Jig)	26	2,311	2,285	1%	0
	Pacific Cod (Hook-and-Line and Pot < 60 ft)	2,293	2,854	561	80%	0
	Pacific Cod, Incidental Catch (Hook-and-Line and Pot)	37	500	463	7%	5
	Rock Sole	30,979	35,275	4,296	88%	1,707
	Rougheye Rockfish	11	207	196	5%	1
	Shortraker Rockfish	89	552	463	16%	6
	Squid (includes CDQ)	308	1,084	776	28%	0
	Yellowfin Sole	75,054	77,083	2,029	97%	4,869
Total:		**819,192**	**1,796,205**	**977,013**	**46%**	**8,680**

This report includes CDQ total catch of squid and ICA pollock. The remaining CDQ allocated catch may be found in the reports with CDQ.

Other gear in the Atka mackerel fishery includes all authorized gear types except jig.

Other flatfish: all flatfish species, except for Pacific halibut, flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

Other rockfish: all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

Other species: sculpins, sharks, skates and octopus.

Note: All weights are in metric tons.

Report run on: May 26, 2005 6:56 AM

Bering Sea Aleutian Islands Seasonal Catch Report (excludes CDQ)

Through: 21-MAY-05

Account: ALL

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Bering Sea

Pollock, AFA Inshore

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	10-JUN-05	257,245	257,215	-30	100%
B	10-JUN-05	01-NOV-05	0	385,822	385,822	0%
Total:			**257,245**	**643,037**	**385,792**	**40%**

Pollock, AFA Catcher Processor

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	10-JUN-05	205,578	205,772	194	100%
B	10-JUN-05	01-NOV-05	0	308,658	308,658	0%
Total:			**205,578**	**514,430**	**308,852**	**40%**

Pollock, AFA Mothership

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
	20-JAN-05	10-JUN-05	51,398	51,443	45	100%
	10-JUN-05	01-NOV-05	0	77,164	77,164	0%
Total:			**51,398**	**128,607**	**77,209**	**40%**

Note: All weights are in metric tons

Report run on: May 26, 2005 6:59 AM

Bering Sea Aleutian Islands Seasonal Catch Report (excludes CDQ)

Through: 21-MAY-05
Account: ALL

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Aleutian Islands

Atka Mackerel, Eastern (Other Gear)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	15-APR-05	827	3,434	2,607	24%
B	01-SEP-05	01-NOV-05	0	3,434	3,434	0%
Total:			**827**	**6,868**	**6,041**	**12%**

Atka Mackerel, Central

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	15-APR-05	16,502	16,419	-83	101%
B	01-SEP-05	01-NOV-05	0	16,419	16,419	0%
Total:			**16,502**	**32,838**	**16,336**	**50%**

Atka Mackerel, Western

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	15-APR-05	2,661	9,250	6,589	29%
B	01-SEP-05	01-NOV-05	0	9,250	9,250	0%
Total:			**2,661**	**18,500**	**15,839**	**14%**

Pollock

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	10-JUN-05	195	9,800	9,605	2%
B	10-JUN-05	01-NOV-05	0	5,300	5,300	0%
Total:			**195**	**15,100**	**14,905**	**1%**

Pollock, Incidental Catch (includes CDQ)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	736	1,200	464	61%
B	10-JUN-05	31-DEC-05	0	800	800	0%
Total:			**736**	**2,000**	**1,264**	**37%**

Note: All weights are in metric tons

Report run on: May 26, 2005 6:59 AM

Bering Sea Aleutian Islands Seasonal Catch Report (excludes CDQ)
Through: 21-MAY-05
Account: ALL

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Bering Sea Aleutian Islands

Pacific Cod, Catcher Processor (Trawl)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	01-APR-05	22,334	22,390	56	100%
B	01-APR-05	10-JUN-05	3,510	13,434	9,924	26%
C	10-JUN-05	01-NOV-05	0	8,956	8,956	0%
Total:			**25,844**	**44,780**	**18,936**	**58%**

Pacific Cod, Catcher Vessel (Trawl)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	01-APR-05	31,237	31,345	108	100%
B	01-APR-05	10-JUN-05	3,188	4,478	1,290	71%
C	10-JUN-05	01-NOV-05	0	8,956	8,956	0%
Total:			**34,425**	**44,779**	**10,354**	**77%**

Pacific Cod, Catcher Processor (Hook-and-Line)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	46,138	46,407	269	99%
B	10-JUN-05	31-DEC-05	0	30,938	30,938	0%
Total:			**46,138**	**77,345**	**31,207**	**60%**

Pacific Cod, Catcher Vessel (Hook-and-Line)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	174	174	0	100%
B	10-JUN-05	31-DEC-05	0	116	116	0%
Total:			**174**	**290**	**116**	**60%**

Pacific Cod, Catcher Processor (Pot)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	1,892	1,914	22	99%
B	01-SEP-05	31-DEC-05	0	1,276	1,276	0%
Total:			**1,892**	**3,190**	**1,298**	**59%**

Note: All weights are in metric tons

Report run on: May 26, 2005 6:59 AM

Bering Sea Aleutian Islands Seasonal Catch Report (excludes CDQ)

Through: 21-MAY-05
Account: ALL

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Bering Sea Aleutian Islands

Pacific Cod, Catcher Vessel (Pot)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	8,703	8,701	-2	100%
B	01-SEP-05	31-DEC-05	0	5,801	5,801	0%
Total:			**8,703**	**14,502**	**5,799**	**60%**

Pacific Cod (Jig)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	30-APR-05	23	24	1	94%
B	30-APR-05	31-AUG-05	3	762	759	0%
C	31-AUG-05	31-DEC-05	0	1,524	1,524	0%
Total:			**26**	**2,310**	**2,284**	**1%**

This report does not include the CDQ allocated catch.

Note: All weights are in metric tons

Report run on: May 26, 2005 6:59 AM

Bering Sea Aleutian Islands Prohibited Species Report
(excludes CDQ fisheries except as noted)
Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Chinook Salmon

Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	BS Pollock (Pelagic)	Count	26,310	26,825	515	98%	0
	AI Pollock (Pelagic)	Count	36	647	611	6%	0
Total:			**26,346**	**27,472**	**1,126**	**96%**	**0**

Halibut Mortality

Non-Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
X	Pacific Cod (Hook-and-Line)	MT	139	775	636	18%	0
	Non-Pacific Cod (Hook-and-Line)	MT	2	58	56	3%	1
Total:			**140**	**833**	**693**	**17%**	**1**

Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	MT	891	1,434	543	62%	13
	Rockfish	MT	0	69	69	0%	0
X	Rock Sole, Flathead Sole, Other Flatfish (Trawl)	MT	657	779	122	84%	0
	Pollock, Atka Mackerel, Other Species	MT	66	232	166	28%	0
X	Yellowfin Sole (Trawl)	MT	448	886	438	51%	30
	Turbot/Sablefish/Arrowtooth Flounder	MT	72	0	-72	0%	4
Total:			**2,135**	**3,400**	**1,265**	**63%**	**47**

Herring (includes CDQ fisheries)

Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	MT	0	27	27	0%	0
	Rockfish	MT	0	10	10	0%	0
	Rock Sole, Flathead Sole, Other Flatfish	MT	0	27	27	1%	0
	Pollock, Atka Mackerel, Other Species	MT	0	192	192	0%	0
	Pollock Pelagic	MT	3	1,562	1,559	0%	0
	Yellowfin Sole	MT	42	183	141	23%	4
	Greenland Turbot, Arrowtooth, Sablefish	MT	0	12	12	0%	0
Total:			**45**	**2,013**	**1,968**	**2%**	**4**

Report run on: May 26, 2005 7:09 AM

Opilio (Tanner) Crab - COBLZ

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	2,286	139,331	137,045	2%	2,022
	Rockfish	Count	0	44,945	44,945	0%	0
	Rock Sole, Flathead Sole, Other Flatfish	Count	10,974	1,082,528	1,071,554	1%	0
	Pollock, Atka Mackerel, Other Species	Count	669	80,903	80,234	1%	0
	Yellowfin Sole	Count	2,782,310	3,101,915	319,605	90%	7,051
	Greenland Turbot, Arrowtooth, Sablefish	Count	0	44,946	44,946	0%	0
Total:			**2,796,238**	**4,494,568**	**1,698,330**	**62%**	**9,073**

Bairdi Crab, Zone 1

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	62,340	183,112	120,772	34%	862
	Rock Sole, Flathead Sole, Other Flatfish	Count	130,909	365,320	234,411	36%	0
	Pollock, Atka Mackerel, Other Species	Count	75	17,224	17,149	0%	0
	Yellowfin Sole	Count	6,105	340,844	334,739	2%	0
Total:			**199,429**	**906,500**	**707,071**	**22%**	**862**

Bairdi Crab, Zone 2

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	19,034	324,176	305,142	6%	749
	Rockfish	Count	0	10,988	10,988	0%	0
	Rock Sole, Flathead Sole, Other Flatfish	Count	84,884	596,154	511,270	14%	0
	Pollock, Atka Mackerel, Other Species	Count	75	27,473	27,398	0%	0
	Yellowfin Sole	Count	70,853	1,788,459	1,717,606	4%	2,769
Total:			**174,847**	**2,747,250**	**2,572,403**	**6%**	**3,518**

Bering Sea Aleutian Islands Prohibited Species Report (excludes CDQ fisheries except as noted)

Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Red King Crab, Zone 1

Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	1,680	26,563	24,883	6%	7
	Rock Sole, Flathead Sole, Other Flatfish	Count	45,258	121,413	76,155	37%	0
	Pollock, Atka Mackerel, Other Species	Count	0	406	406	0%	0
	Yellowfin Sole	Count	47,765	33,843	-13,922	141%	0
Total:			**94,704**	**182,225**	**87,521**	**52%**	**7**

This report does not include the CDQ allocated catch.

"Other flatfish" for PSC monitoring: all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

COBLZ: C. Opilio Crab Bycatch Limitation Zone. 50 CFR 679.21(e) and Figure 13.

Zone 1: Federal Reporting Areas 508, 509, 512, 516.

Zone 2: Federal Reporting Areas 513, 517, 521.

Data is based on observer reports, extrapolated to total groundfish harvest. Estimates for all weeks may change due to incorporation of late or corrected data.

Report run on: May 26, 2005 7:09 AM

Bering Sea Aleutian Islands Seasonal Prohibited Species Report (excludes CDQ fisheries)

Through: 21-MAY-05
Account: ALL

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Non-Chinook Salmon, CVOA

Trawl Gear

Season	Begin	End	Units	Total Catch	Limit	Remaining	% Taken
Non-Chinook Salmon CVOA	15-AUG-05	14-OCT-05	Count	0	38,850	38,850	0%
Total:				**0**	**38,850**	**38,850**	**0%**

Halibut Mortality

Pacific Cod (Hook-and-Line)

Season	Begin	End	Units	Total Catch	Limit	Remaining	% Taken
1st Season	01-JAN-05	10-JUN-05	MT	139	320	181	43%
2nd Season	10-JUN-05	15-AUG-05	MT	0	0	0	0%
3rd Season	15-AUG-05	31-DEC-05	MT	0	455	455	0%
Total:				**139**	**775**	**636**	**18%**

Rock Sole, Flathead Sole, Other Flatfish (Trawl)

Season	Begin	End	Units	Total Catch	Limit	Remaining	% Taken
1st Season	20-JAN-05	01-APR-05	MT	527	448	-79	118%
2nd Season	01-APR-05	05-JUL-05	MT	130	164	34	79%
3rd Season	05-JUL-05	31-DEC-05	MT	0	167	167	0%
Total:				**657**	**779**	**122**	**84%**

Yellowfin Sole (Trawl)

Season	Begin	End	Units	Total Catch	Limit	Remaining	% Taken
1st Season	20-JAN-05	01-APR-05	MT	253	262	9	97%
2nd Season	01-APR-05	21-MAY-05	MT	165	195	30	85%
3rd Season	21-MAY-05	05-JUL-05	MT	30	49	19	61%
4th Season	05-JUL-05	31-DEC-05	MT	0	380	380	0%
Total:				**448**	**886**	**438**	**51%**

This report does not include the CDQ allocated catch.

CVOA: Catcher Vessel Operational Area. 50 CFR 679.22(a)(5) and Figure 2.

Other flatfish for PSC monitoring: all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Data is based on observer reports, extrapolated to total groundfish harvest. Estimates for all weeks may change due to incorporation of late or corrected data.

Report run on: May 26, 2005 7:12 AM

Bering Sea Aleutian Islands
Seasonal Non-Sideboard Prohibited Species Report
(excludes CDQ fisheries)
Through: 21-MAY-05
Account: ALL

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Red King Crab, RKCSS

Trawl Gear

Season	Begin	End	Units	Total Catch	Limit	Remaining	% Taken
Rock Sole, Flathead Sole, Other Flatfish (Non Pelagic)	20-JAN-05	31-DEC-05	Count	94,704	42,495	-52,209	223%
Total:				**94,704**	**42,495**	**-52,209**	**223%**

RKCSS: Red king crab savings subarea. 50 CFR 679.22(a)(3) and Figure 11.

Report run on: May 26, 2005 7:20 AM

Gulf of Alaska Catch Report

Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Western, Central Pollock

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
X	Pollock, 610 Shumagin	9,464	30,380	20,916	31%	0
X	Pollock, 620 Chirikof	26,764	34,404	7,640	78%	0
X	Pollock, 630 Kodiak	8,546	18,718	10,172	46%	0

Western Gulf

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	1,972	8,000	6,028	25%	0
	Deep Water Flatfish	1	330	329	0%	0
	Shallow Water Flatfish	52	4,500	4,448	1%	0
	Flathead Sole	535	2,000	1,465	27%	0
	Rex Sole	509	1,680	1,171	30%	0
	Pacific Ocean Perch	58	2,567	2,509	2%	0
	Rougheye Rockfish	10	188	178	5%	0
	Shortraker Rockfish	30	155	125	19%	0
	Thornyhead Rockfish	63	410	347	15%	2
	Pelagic Shelf Rockfish	2	377	375	1%	0
	Northern Rockfish	22	808	786	3%	0
	Other Rockfish	9	40	31	22%	0
X	Pacific Cod, Inshore	10,261	14,118	3,857	73%	0
X	Pacific Cod, Offshore	124	1,569	1,445	8%	0
	Sablefish (Hook-and-Line)	883	2,032	1,149	43%	39
	Sablefish (Trawl)	16	508	492	3%	0
	Big Skate	23	727	704	3%	0
	Longnose Skate	9	66	57	13%	0

Note: All weights are in metric tons.

Report run on: May 26, 2005 6:58 AM

Gulf of Alaska Catch Report

Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Central Gulf

Sea-sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	9,200	25,000	15,800	37%	161
	Deep Water Flatfish	180	3,340	3,160	5%	0
	Shallow Water Flatfish	1,048	13,000	11,952	8%	173
	Flathead Sole	1,302	5,000	3,698	26%	6
	Rex Sole	1,078	7,340	6,262	15%	6
	Pacific Ocean Perch	120	8,535	8,415	1%	0
	Rougheye Rockfish	44	557	513	8%	2
	Shortraker Rockfish	37	324	287	12%	2
	Pelagic Shelf Rockfish	36	3,067	3,031	1%	2
	Northern Rockfish	17	4,283	4,266	0%	0
	Thornyhead Rockfish	113	1,010	897	11%	6
	Other Rockfish	16	300	284	5%	2
X	Pacific Cod, Inshore	12,765	22,577	9,812	57%	93
X	Pacific Cod, Offshore	91	2,509	2,418	4%	0
	Sablefish (Hook-and-Line)	3,513	5,800	2,287	61%	413
	Sablefish (Trawl)	27	1,450	1,423	2%	0
	Big Skate	468	2,463	1,995	19%	10
	Longnose Skate	592	1,972	1,380	30%	31

Eastern Gulf

Sea-sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Rougheye Rockfish	70	262	192	27%	3
	Shortraker Rockfish	71	274	203	26%	2
	Thornyhead Rockfish	67	520	453	13%	7
	Pacific Cod, Inshore	11	3,294	3,283	0%	1
	Pacific Cod, Offshore	0	366	366	0%	0
	Big Skate	56	809	753	7%	0
	Longnose Skate	109	780	671	14%	2

Note: All weights are in metric tons.

Report run on: May 26, 2005 6:58 AM

Gulf of Alaska Catch Report

Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

West Yakutat

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	9	2,500	2,491	0%	0
	Deep Water Flatfish	0	2,120	2,120	0%	0
	Shallow Water Flatfish	0	2,030	2,030	0%	0
	Flathead Sole	0	3,000	3,000	0%	0
	Rex Sole	0	1,340	1,340	0%	0
	Pacific Ocean Perch	59	841	782	7%	0
	Pelagic Shelf Rockfish	0	211	211	0%	0
	Other Rockfish	5	130	125	3%	0
	Pollock	1,876	1,688	-188	111%	0
	Sablefish (Hook-and-Line)	1,293	2,273	980	57%	34
	Sablefish (Trawl)	0	307	307	0%	0

Southeast

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	16	2,500	2,484	1%	0
	Deep Water Flatfish	11	1,030	1,019	1%	5
	Shallow Water Flatfish	0	1,210	1,210	0%	0
	Flathead Sole	0	390	390	0%	0
	Rex Sole	0	2,290	2,290	0%	0
	Pacific Ocean Perch	0	1,632	1,632	0%	0
	Pelagic Shelf Rockfish	1	898	897	0%	0
	Other Rockfish	34	200	166	17%	10
	Pollock	0	6,520	6,520	0%	0
	Demersal Shelf Rockfish	102	410	308	25%	9
	Sablefish (Hook-and-Line)	1,928	3,570	1,642	54%	141

Entire Gulf

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Atka Mackerel	26	600	574	4%	0
	Other Skates	451	1,327	876	34%	4
	Other Species	1,794	13,871	12,077	13%	20
	Total:	**97,987**	**291,297**	**193,310**	**34%**	**1,187**

Deep water flatfish: Dover sole, Greenland turbot, and deepsea sole.

Shallow water flatfish: flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder.

Note: All weights are in metric tons.

Report run on: May 26, 2005 6:58 AM

Other rockfish in the Western and Central Regulatory Areas and in the West Yakutat District: slope rockfish and demersal shelf rockfish.

Other rockfish in the Southeast Outside District: slope rockfish.

Slope rockfish: aurora, blackgill, bocaccio, chilipepper, darkblotch, greenstriped, harlequin, pygmy, redbanded, redstripe, sharpchin,shortbelly, silvergrey, splitnose, stripetail, vermilion, and yellowmouth.

In the Eastern GOA only, "slope rockfish" also includes northern rockfish.

Demersal shelf rockfish: canary, china, copper, quillback, rosethorn, tiger, and yelloweye.

Pelagic shelf rockfish: dusky, widow, and yellowtail.

Other species: sculpins, sharks, squid, and octopus.

Note: All weights are in metric tons.

Gulf of Alaska Seasonal Catch Report

Through: 21-MAY-05
Account: ALL

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Western, Central Pollock

Pollock, 610 Shumagin

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	10-MAR-05	7,215	5,035	-2,180	143%
B	10-MAR-05	31-MAY-05	2,248	5,035	2,787	45%
C	25-AUG-05	01-OCT-05	0	10,155	10,155	0%
D	01-OCT-05	01-NOV-05	0	10,155	10,155	0%
Total:			**9,464**			

Pollock, 620 Chirikof

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	10-MAR-05	13,003	11,692	-1,311	111%
B	10-MAR-05	31-MAY-05	13,760	13,820	60	100%
C	25-AUG-05	01-OCT-05	0	4,446	4,446	0%
D	01-OCT-05	01-NOV-05	0	4,446	4,446	0%
Total:			**26,763**			

Pollock, 630 Kodiak

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-JAN-05	10-MAR-05	4,677	4,148	-529	113%
B	10-MAR-05	31-MAY-05	3,862	2,021	-1,841	191%
C	25-AUG-05	01-OCT-05	0	6,274	6,274	0%
D	01-OCT-05	01-NOV-05	0	6,275	6,275	0%
Total:			**8,540**			

Western Gulf

Pacific Cod, Inshore

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	10,261	8,471	-1,790	121%
B	01-SEP-05	31-DEC-05	0	5,647	5,647	0%
Total:			**10,261**	**14,118**	**3,857**	**73%**

Pacific Cod, Offshore

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	124	941	817	13%
B	01-SEP-05	31-DEC-05	0	628	628	0%
Total:			**124**	**1,569**	**1,445**	**8%**

Note: All weights are in metric tons

Report run on: May 26, 2005 7:01 AM

Gulf of Alaska Seasonal Catch Report	National Marine Fisheries Service Alaska Region, Sustainable Fisheries Catch Accounting
Through: 21-MAY-05 **Account:** ALL	

Central Gulf

Pacific Cod, Inshore

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	12,765	13,547	782	94%
B	01-SEP-05	31-DEC-05	0	9,031	9,031	0%
Total:			**12,765**	**22,578**	**9,813**	**57%**

Pacific Cod, Offshore

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	01-JAN-05	10-JUN-05	91	1,505	1,414	6%
B	01-SEP-05	31-DEC-05	0	1,003	1,003	0%
Total:			**91**	**2,508**	**2,417**	**4%**

Note: All weights are in metric tons

Report run on: May 26, 2005 7:01 AM

Gulf of Alaska Prohibited Species Report

Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Non-Chinook Salmon

Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Non Chinook Salmon	Count	334	0			0
Total:			**334**	**0**			**0**

Chinook Salmon

Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Chinook Salmon	Count	19,023	0			11
Total:			**19,023**	**0**			**11**

Halibut Mortality

Non-Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Other Hook-and-Line Fisheries	MT	97	290	193	33%	0
Total:			**97**	**290**	**193**	**33%**	**0**

Trawl Gear

Sea-sons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Trawl Fishery	MT	721	2,000	1,279	36%	35
Total:			**721**	**2,000**	**1,279**	**36%**	**35**

No PSC Limits apply to salmon in the GOA.

Other hook-and-line fisheries means all hook-and-line fisheries except sablefish and demersal shelf rockfish in the Southeast District. The hook-and-line sablefish fishery is exempt from halibut bycatch limits.

Halibut mortality for the demersal shelf rockfish fishery, Southeast District is not listed due to insufficient observer coverage.

Data is based on observer reports, extrapolated to total groundfish harvest. Estimates for all weeks may change due to incorporation of late or corrected data.

Report run on: May 26, 2005 7:11 AM

Gulf of Alaska Halibut Mortality Report

Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Trawl Fisheries

Deep Water Species Complex

Season	Begin	End	Total Catch	Limit	Limit Remaining	% Taken
1st Season	20-JAN-05	01-APR-05	157	100	-57	157%
2nd Season	01-APR-05	05-JUL-05	258	300	42	86%
3rd Season	05-JUL-05	01-SEP-05	0	400	400	0%
4th Season	01-SEP-05	30-SEP-05	0	0	0	0%
Total:			**415**	**800**	**385**	**52%**

Shallow Water Species Complex

Season	Begin	End	Total Catch	Limit	Limit Remaining	% Taken
1st Season	20-JAN-05	01-APR-05	168	450	282	37%
2nd Season	01-APR-05	05-JUL-05	138	100	-38	138%
3rd Season	05-JUL-05	01-SEP-05	0	200	200	0%
4th Season	01-SEP-05	30-SEP-05	0	150	150	0%
Total:			**306**	**900**	**594**	**34%**

Year-To-Date

Account	Total Catch	Limit	Limit Remaining	% Taken	Last Wk Catch
Trawl Fishery	721	2,000	1,279	36%	35

Other Hook-and-Line Fisheries

Season	Begin	End	Total Catch	Limit	Limit Remaining	% Taken
1st Season	01-JAN-05	10-JUN-05	97	250	153	39%
2nd Season	10-JUN-05	01-SEP-05	0	5	5	0%
3rd Season	01-SEP-05	31-DEC-05	0	35	35	0%
			97	**290**	**193**	**33%**

Deep-water species complex: sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder. Shallow-water species complex: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and 'other species'.

No apportionment between shallow-water and deep-water fishery complexes during October 1 to December 31 (300 mt allocated).

Other hook-and-line fisheries means all hook-and-line fisheries except sablefish and demersal shelf rockfish in the Southeast District.

Halibut mortality for the demersal shelf rockfish fishery, Southeast District is not listed due to insufficient observer coverage.

Note: All weights are in metric tons.

Report run on: May 26, 2005 7:22 AM

Gulf of Alaska Halibut Mortality Report

Through: 21-MAY-05

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Data is based on observer reports, extrapolated to total groundfish harvest. Estimates for all weeks may change due to incorporation of late or corrected data.

Note: All weights are in metric tons.

Report run on: May 26, 2005 7:22 AM

Andy Smoker NMFS

National Marine Fisheries Service
Alaska Region
Inseason Management Highlights

May 25, 2005

Bering Sea and Aleutian Islands

Bering Sea Pollock

All three directed fisheries completed the A season by the end of March. The combined non-CDQ A season allocation was 514,122 mt. Of the 26,825 Chinook salmon limit, 26,309 animals were taken, leaving about 516. The 2005 A season Chinook catch in the pelagic trawl fishery is higher compared to 2004 (22,787 Chinook) but much lower than 2003 (32,103 Chinook). Based on the last few years, the entire limit will likely be taken by early August, which will close the Bering Sea Chinook salmon savings areas on September 1. The CDQ pollock fishery caught 59,074 mt of the 59,140 mt pollock allocation and took about 1,300 of the 2,177 CDQ Chinook salmon limit. The Pollock B season starts at noon, June 10.

The incidental catch of pollock through May 7 is 22,600 mt which is less than in 2004 (26,300 mt). The total groundfish catch in the non-pollock fisheries for January-April is about 236,000 mt for both 2004 and 2005, indicating an average incidental catch rate of pollock in those fisheries of about 10%. Roughly 40% of the pollock incidental catch occurs in the Pacific cod target and the remainder in the yellowfin sole, rock sole and flathead sole fisheries in descending order.

In the non-pollock fisheries, pollock retention rates (i.e. of the total incidental pollock caught, the proportion that was retained) are highest in the hook-and-line catcher/processor Pacific cod target (87%) with a total catch of 1,453 mt of pollock.

Within the flatfish targets total catch of pollock dropped (comparing Jan-May, 2004 vs 2005) by 14% from 23,448 mt to 20,143 mt, however retention rates increased from 54% in 2004 to 60% in 2005. Fewer pollock were caught but retention rates were higher.

Aleutian Islands Pollock

The Aleutian Island subarea directed pollock fishery allocation to the Aleut Corporation became effective on February 24, 2005. Two vessels using pelagic trawl gear caught about 200 mt. One vessel encountered high incidental catch of Pacific ocean perch. Thirty-six Chinook salmon were caught out of the 647 salmon limit. About 730 mt of pollock was taken incidentally primarily in the trawl catcher vessel and catcher/processor Pacific cod fisheries and to a lesser extent in the Atka mackerel fishery. NMFS is pursuing an action to reallocate the uncaught amounts of the projected non-CDQ and CDQ allocations from the Aleutian Islands subarea to the Bering Sea subarea.

Flatfish

Flatfish fisheries (arrowtooth flounder, rock sole, flathead sole, 'other flatfish' and yellowfin sole targets) have taken about 140,000 mt of groundfish through May 21, compared to about 144,429 mt through roughly the same time period in 2004. Of the

140,000 mt of groundfish caught, about 70% was taken in the yellowfin sole target, 23% in rocksole with arrowtooth flounder, flathead sole and other flatfish making up the remaining 5%. Yellowfin sole closed to directed fishing on May 19 when the initial TAC was reached. Retention was prohibited for Alaska plaice on May 9, catch is currently over the initial TAC by 2,100 mt. Rock sole (4,300 mt remaining) and "other flatfish" (200 mt remaining) are close to reaching their initial TACs. Incidental catch of rock sole is expected to be high in the current trawl Pacific cod fishery.

The 'rocksole/other flatfish/flathead sole' fishery opens July 5 with the final release of halibut mortality. The primary target is expected to be flathead sole. Depending on the status of catch of groundfish at the end of July the agency is contemplating a reserve release apportionment that may re-open the yellowfin sole fishery for a brief time in August.

Atka mackerel

Preparations are being made for the second harvest limitation area (HLA) 'platoon' fisheries in 542 and 543. The registration deadline is July 31 for the September 1 opening. In 2004, 9 catcher/processors participated in the B season.

Six catcher/processors participated in the 2005 A season HLA fisheries in 542 and 543. The A season fishery took about 70% of the available TACs which totaled 29,103 mt. Eighty percent of the catch came from Area 542.

PSC Management

The rock sole/flathead sole/other flatfish fishery exceeded its first seasonal allocation of halibut mortality by 78 mt and closed March 1. The second season started April 1 with 86 mt of halibut mortality available and closed April 22 leaving 135 mt of halibut mortality for the third season starting at noon, July 5.

Zone 1 closed for the year on March 16 to yellowfin sole fishing due to incidental catch of red king crab. The yellowfin sole fishery had reasonable bycatch rates of halibut. The fishery has taken 416 mt of halibut mortality out of a cumulative third season limit of 509 mt. The fourth season allocation adds 380 mt of halibut mortality on July 5.

The catch rates of *C. opilio* crab inside the *C. opilio* Bycatch Limit Zone (COBLZ) increased in late April to 150,000 crab/day. The fleet avoided a closure by moving outside of the COBLZ where the opilio bycatch decreased significantly. Currently NMFS estimates 90% of the 3,101,095 crab COBLZ limit has been taken. Over the last three years an average of about 30% of the limit has been taken with the previous peak of 50% in 2004.

Pacific cod

BSAI Hook-and-Line Catcher/Processor

A 5% smaller Pacific cod A season TAC, stronger participation, good weather and higher catch rates than previous years combined to create a very fast paced fishery. Comparing

2004 and 2005, the total number of vessels fishing increased from 37 to 39. In 2004, the average number of catcher/processors active during any given week was 33. In 2005 the average was 38. The overall weekly CPUE increased from roughly 140 mt/vessel to 160 mt/vessel. In 2005, a total of 46,093 mt was taken of the 46,406 mt A season allocation. The fishery closed on February 22, 2005 compared to March 13 in 2004.

The B season opens August 15 when an additional 455 mt of halibut mortality and 30,938 mt of Pacific cod becomes available. In 2004 the total rollover from jig, trawl and pot gear to the hook-and-line catcher processors was just under 17,000 mt. The 2005 rollover may be less given that the trawl yellowfin sole fishery has closed earlier this year and that the Pacific cod TAC is lower. Initial 'serious' estimates of un-harvested gear allocations and rollover amounts will be made in September. The fishery is expected to stay open into late November/early December.

Eleven vessels fishing under the CDQ program took about 7,091 mt through May 25, fishing ended by early April.

BSAI Hook-and-Line/Pot Catcher Vessels < 60' and Hook-and-line Catcher Vessels
The A season hook-and-line catcher vessel allocation is 174 mt. The fishery closed on March 10 with the entire allocation taken by vessels < 60'.

The 2005 allocation of Pacific cod to vessels < 60' using hook-and-line or pot gear was 1,354 mt and an additional 1,500 mt was transferred from the jig allocation. During the A season, hook-and-line vessels (12) harvested 800 mt and pot vessels (9) harvested 2,101 mt. Compared to 2004 the effort was lower by 2 pot vessels and higher by 2 hook-and-line vessels in 2005. Catch was accelerated in 2005 vs. 2004. The 2005 fishery closed on April 19 and in 2004 it remained open all year.

Jig Gear
Nine vessels have caught 25 mt of Pacific cod so far this year. In 2004, 16 vessels caught 230 mt of Pacific cod and in 2003, 15 vessels caught 156 mt.

Trawl catcher vessels
The directed fishery under the B season allocation is open with about 1,400 mt remaining. The A season fishery initially closed on March 13 and as enough quota remained reopened on March 29 just prior to the initiation of the B season on April 1.

On June 10, the final seasonal allocation of 8,956 mt will be released. The total catch to date is 34,425 mt of an annual allocation of 44,779 mt. Since April 14, no catcher vessels have participated in this fishery.

Trawl Catcher/Processors
The directed fishery under the B season allocation is open with about 10,500 mt remaining until the final allocation on June 10 of 8,956 mt. Since the closure of the A season on March 13, most of the Pacific cod has been taken in the yellowfin sole fishery. With the closure of the yellowfin sole on May 19, the portion of the fleet that does not

stop operations during late May and June in advance of the July 5 fisheries is expected to target Pacific cod. A total of 25,844 mt of Pacific cod have been taken of the 44,779 mt annual allocation.

Greenland turbot and arrowtooth flounder
Three hook-and-line catcher/processors are currently participating in the Greenland turbot fishery, which opened on May 1. In 2004, seventy percent of the BSAI catch (of about 2,200 mt) was taken by hook-and-line vessels, 30% by non-pelagic trawl gear (primarily incidentally in flatfish targets) with trace amounts by pelagic trawl and pot gear. Total catch so far this year is 180 mt, 80% of which has been taken primarily in the directed fishery by hook-and-line catcher/processors. Effort by hook-and-line catcher/processors is expected to increase in July prior to the August hook-and-line Pacific cod fishery. Catch incidental to the trawl flathead sole fishery in July is also expected increase take of Greenland turbot.

About 3,800 mt of arrowtooth flounder has been taken in 2005 compared to about 4,800 mt through May of 2004. Eighty five percent of the catch in 2005 (~3,300 mt) has been taken by non-pelagic trawl gear. Of that amount about half has been retained which is nearly double the retention rate for non-pelagic trawl gear in 2004. Hook-and-line catcher/processors have taken about 5% of the arrowtooth catch in 2004 and 2005, (roughly 225 mt) the retention rate for this sector has likewise increased from 23% to 36%.

Gulf of Alaska

Skates
As of May 25, 1,708 mt of skates were caught in the GOA (55% retained). Longnose skate made up 42% (710 mt) of the catch, 74% were retained. Big skate made up 32% (546 mt) of the catch, 66% were retained. 'Other' skates made up 26% (451 mt) of the catch, 26% were retained. Seventy percent of all skates were from statistical area 630. Most of the skates were caught in the non-pelagic trawl arrowtooth target (40%) and hook-and-line Pacific cod target (20%). Only 54 mt of big and 107 mt of longnose skates were caught in the directed hook-and-line skate target.

Western GOA Pacific cod
The Western GOA Pacific cod A season inshore component closed February 24 (same date as 2004). The catch (10,259 mt) has exceeded the A season TAC (8,471 mt) by 1,788 mt. Catch rates were 5.5 times higher during the last week of the fishery than the previous week (driven by trawl catcher vessels) and were not anticipated by inseason management. As a proportion of total A season catch, trawl catcher vessel catch increased by 26% from15% in 2004 to 42% in 2005, catcher vessel pot gear decreased from 65% to 50% and hook-and-line catcher/processors from 17% to 3%.

Central GOA Pacific cod

The Central GOA Pacific cod A season inshore component closed January 26 (January 31 in 2004). The A season TAC is 13,547 mt and the directed fishery caught 11,700 mt. To date, 740 mt of the A season allocation was taken as incidental catch primarily in trawl fisheries. The hook-and-line catcher vessel proportion of catch dropped from 31% in 2004 to 23% in 2005, non-pelagic trawl catcher vessel proportion dropped from 42% to 36% and pot catcher vessel catch increased from 25% to 38%.

GOA Pollock

The A season in statistical area 610 was marked by very high catch rates in a 3 day fishery opening on January 20. NMFS expected a catch of 5,035 mt, but the fishery took more than 7,200 mt. The B season TAC was reduced by the A season overage to 2,900 mt. The fishery opened on March 10 for 2 days based on expected effort and historic catch rates. It took 2,200 mt which leaves about 610 mt of the combined A and B season TACs. The C season will open with about 10,700 mt.

Fishing in the A season in statistical area 620 and 630 was delayed as the trawl fleet initially fished for Pacific cod.

Once fishing got started in statistical area 620, 12,872 mt were taken by March 2 against the TAC of 11,692 mt. This overage is about a day of fishing. The B season fishery opened on March 10 and closed March 20 taking 13,629 mt against the TAC of 13,820 mt. Combined with other incidental catch a total overage of 1,251 mt for the A & B season leaves about 3,200 mt for the C season fishery in August.

The A season fishery in statistical area 630 was active from February 6 through 14. About 4,677 mt were taking against the TAC of 4,148 mt leaving an overage of 529 mt. The bigger surprise occurred in the B season fishery when a 12 hour opening took nearly 3,862 mt against a B season TAC, adjusted for the A season fishery overage, of about 1,500 mt. The combined A and B season overage is 2,370 mt. The C season will open with about 3,900 mt.

The C season fishery for pollock in statistical areas 610, 620 and 630 opens August 25.

Statistical area 640, West Yakutat, has an annual TAC of 1,688 mt. A 3 day fishery from March 24 through 26, involving 15 vessels, took 1,876 mt. Statistical area 650 has a 6,520 mt TAC of which none is harvested.

Flatfish

About 14,000 mt (13,300 mt in 2004 and 20,000 mt in 2003) of flatfish have been taken through May. Catcher/processors caught 42% of the flatfish with arrowtooth flounder being the majority of their catch followed by rex sole and flathead sole. Shore delivering catcher vessels caught 58% of the flatfish, the majority of which was arrowtooth flounder followed by flathead sole and shallow water flatfish (predominately rock sole).

Gulf wide arrowtooth flounder retention has increased from 44% in 2004 to 66% in 2005. Within the catcher/processor component retention has increased from 16% in 2004 to

38% in 2005. Within the catcher vessel fishery retention has increased from 64% to 82%. In 2004 a total of about 15,000 mt of arrowtooth flounder were caught. Through May of 2005 catch is estimated at 11,200 mt.

In the Western GOA about 30% of the rex and flathead sole TACs have been taken with about 1,200 mt and 1,500 mt remaining respectively. Seventy percent (about 6,000 mt) remains in the arrowtooth flounder TAC.

In the Central GOA about 3,700 mt of flathead sole, 6,300 mt of rex sole and 12,000 mt of shallow water flatfish remain. The primary target within the shallow water flatfish species group is rock sole. Fifteen thousand eight hundred tons of arrowtooth flounder (63% of TAC) remain.

Deep Water Complex Trawl Fishery

The trawl deep water complex fishery closed for the second season on May 3. The 400 mt halibut mortality allocation from the first and second seasons was exceeded by about 15 mt. The arrowtooth flounder target accounted for 86% (63% catcher vessel) of the halibut mortality and rex sole target accounted for 14%. An additional 400 mt becomes available on July 5.

Shallow Water Complex Trawl Fishery

The trawl shallow water complex fishery has been open all year. About 271 mt of halibut mortality remains out of the combined 550 mt first and second seasonal allocations. Pacific cod accounted for 55%, shallow water flatfish accounted for 31%, and flathead sole (all catcher/processor) accounted for 14% of the halibut mortality. Catcher processors accounted for 15% and catcher vessels accounted for 83% of the halibut mortality, driven by the inshore Pacific cod fisheries in the West and Central Districts. An additional 200 mt becomes available on July 5.

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AGENDA B-2
JUNE 2005
Supplemental

May 24, 2005

OVERNIGHT MAIL

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. Fourth Avenue, Suite 306
Anchorage, Alaska 99501

Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 W. Fourth Avenue, Suite 306
Anchorage, Alaska 99501

Re: White Paper Relating to Amendment 79

Dear Ms. Madsen & Mr. Oliver:

We represent Legacy Fishing, Inc., in matters related to management of the Bering Sea/Aleutian Islands ("BS/AI") groundfish fishery. In the years subsequent to the Council's passage of a motion to adopt groundfish retention strategies contained in draft Amendment 79 to the BS/AI Groundfish Fishery Management Plan ("FMP"), there has been further judicial explication of the "practicability" standard, as used in National Standard Nine (bycatch minimization), and elsewhere in the Magnuson-Stevens Act ("MSA"). 16 U.S.C. § 1851(a)(9). These cases have more fully enumerated a Council's duties and authority and are explained in much greater detail in the attached White Paper. In light of these analyses and for the reasons explained below, we would respectfully request that the North Pacific Fishery Management Council move to either withhold formal submission of Amendment 79 or to reopen Amendment 79 in order to make minor adjustments which align it more closely with the law.

Briefly stated, even at the time the groundfish retention standards ("GRS") were adopted, the Council saw the development of what is now known as Amendment 80 as "integral" to the head-and-gut catcher/processor ("HG CP") fleet's "ability to live within the requirements of" Amendment 79. Minutes, NPFMC Meeting (June 2003), at 17, *available at* http://www.fakr.noaa.gov/npfmc/minutes/Jun03CnclMinutes.pdf. In recognition of the potentially economically ruinous impacts of going forward with the GRS standards ahead of the proposed plan to allow the creation of cooperatives under Amendment 80, an exemption was created for HG CP vessels whose length overall ("LOA") is less than 125'. However, as shown in the attached White Paper, this threshold excludes some vessels whose LOA exceeds this limit, and yet would be more economically vulnerable than some exempted vessels due to hold space and processing capabilities. This factor may lead a court to conclude both that the exemption is not rationally drawn and that Amendment 79 is not practicable as a bycatch reduction measure under the MSA.

Moreover, due to a determination by the National Marine Fisheries Service ("NMFS") that catcher/processor vessels should be treated the same as catcher vessels (and not as processors) for the purposes of determining whether they qualify as "small business concerns" under the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, Amendment 79 contains no legally sufficient analysis of the impacts of these regulations on the HG CP sector under the law. The White Paper also argues that Amendment 79's National Standard Eight (impacts on fishing communities 16 U.S.C. § 1851(a)(8)) analysis is likewise deficient.

For these reasons, and given that the Council is moving apace on a rationalization plan for the BS/AI groundfish fisheries, we strongly urge the Council to stay final development of its Amendment 79 package. It is our understanding that the current posture of the rule is that NMFS is in the process of drafting and reviewing the implementing regulations for the amendment. Formal submission for review under 16 U.S.C. § 1854(a) & (b) has yet to occur. Our request, therefore, would be that the Council move to withhold Amendment 79's formal submission until Amendment 80 and its implementing regulations are similarly ready for submission.

As an alternative, we would suggest a motion to reopen Amendment 79 in order to redraft the exemption to the GRS to include all vessels that would be economically devastated by these standards should they be implemented ahead of Amendment 80. This would have the added benefit of allowing the Council an opportunity to clarify the issues raised in the November 29, 2004, letter from Regional Administrator Balsiger. Specifically, Mr. Balsiger requested guidance on whether, due to delay in implementing the amendment, the first year GRS target should be 65 or 75 percent. Further, he asked for Council input on how to address groundfish species on prohibited species status in the calculation of vessel specific compliance with the annual GRS given that, subsequent to passage of Amendment 79, certain flatfish species have attained such status.

Either approach would allow implementation of the GRS in a manner consistent with the Council's legal responsibilities under the MSA, and in a manner better suited to maintaining the participation of small businesses and fishing communities in this fishery. We hope that you take the time to review the attached White Paper and consider the issues raised therein. I will be available at the June Council meeting, and can be reached at the number above before then, to answer any questions you may have. Thank you very much for your attention to this important matter.

Sincerely,

Shaun M. Gehan

SMG;mcr

cc: Members of the North Pacific Fishery Management Council

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WHITE PAPER:

LEGAL ISSUES RELATING TO AMENDMENT 79 TO THE FISHERY MANAGEMENT PLAN FOR GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS

Prepared by:

David E. Frulla
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Dated: May 24, 2005

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We represent Legacy Fishing, Inc., with respect to the issues raised in Amendment 79 to the Fishery Management Plan ("FMP") for Groundfish in the Bering Sea and Aleutian Islands ("BSAI"). For the reasons outlined below, it is our considered view that Amendment 79, if passed in isolation and ahead of its anticipated "trailing amendment," Amendment 80, could be vulnerable to successful legal challenge on a number of grounds. Therefore, as it stands, Amendment 79 should be considered to be inconsistent with National Standards Seven, Eight, and Nine. 16 U.S.C. § 1851(a)(7)-(9). However, withholding submission until Amendment 80 and its implementing regulations are likewise ready for review would relieve the illegal and duplicative economic hardships posed by the proposed measure. Alternatively, the practicability issues raised by Amendment 79 could also be resolved by raising the length threshold so that all of the most seriously impacted vessels would not be subject to the measure's requirements.

These issues are discussed in greater detail below.

I. Executive Summary

Through Amendment 79, the North Pacific Fishery Management Council ("NPFMC" or "Council") has launched an ambitious bycatch reduction program purportedly designed to meet the MSA requirements under 16 U.S.C. § 1853(a)(11) and National Standard 9. *Id.* § 1851(a)(9). Prudently, though on a somewhat less advanced track, the Council is planning a forward-looking rationalization process that will enable fishing businesses to operate on a more stable and financially sound basis. Among the provisions of this latter amendment, the fishing industry will have options for forming cooperatives under which they may trade bycatch and fishery allocations and, thus, be in better position financially and otherwise to deal with some of the recognized hardships that Amendment 79 will impose.

Given this fact, as argued below, it makes little sense to require some of the smaller head-and-gut trawl catcher/processor ("HT-CP") vessels (in the relevant terms of storage and processing capacities) in the Bering Sea/Aleutian Islands groundfish fisheries to invest significant, perhaps bankrupting, amounts of money into vessel capacity and processing plant upgrades in response to Amendment 79, when, potentially, the need to make such investments may disappear when Amendment 80's rationalization plan is instituted. Amendment 80 is expected to contain mechanisms that will allow these highly-impacted vessels to either comply with the bycatch retention requirements through contractual means or retire from the fishery in an economically rational manner.

This White Paper discusses recent case law developed subsequent to the Council's passage of Amendment 79 that provides a clearer definition of the practicability standard which governs the bycatch provisions of the MSA. It also discusses other National Standards which have relevance to the complications posed by the rather unfortunate timing of development of these two major regulatory actions. The legal discussion concludes with a review of other authorities applicable to rulemaking under the MSA, notably the Regulatory Flexibility Act and case law interpreting this statute, and their impact on the decisions before the National Marine Fisheries Service ("NMFS") and the Council as they move forward in deciding how to proceed with these complex issues.

In the end, this paper concludes that, given the posture of Amendment 79 vis-à-vis Amendment 80, that the most prudent course would be to withhold formal submission of Amendment 79 until Amendment 80 is likewise ready for submission, and moving the two rulemakings together on a parallel track. Alternatively, the paper recommends that the Council reopen Amendment 79 for slight modification in order to insure that all the most seriously impacted vessels are exempted. Either course would prevent unintended consequences which could lead to unnecessary economic hardship and dislocation.

II. Regulatory Backdrop

In July 2003, the North Pacific Fishery Management Council adopted Amendment 79 in order to establish a set of groundfish retention standards ("GRS") that require retention and utilization of an increasing percentage of a vessel's allowable harvest. The goal is to provide an economic disincentive to discard fish which would otherwise be uneconomic to process and land. Although this policy creates certain practical and ecologic problems,[1] its aim is to spur innovation in development of so-called "clean" methods of fishing and gear research and development.

Subsequent to the passage of Amendment 79 and at the NPFMC's request, the National Marine Fisheries Service ("NMFS") adopted an accompanying change to the way that Maximum Retainable Amounts ("MRA") for pollock are calculated. Specifically, change was made to the timing when a non-American Fisheries Act vessel's pollock allowance of twenty percent is calculated, enforcing the MRA at the end of a trip rather than requiring meeting this standard at all points during a fishing trip. 69 Fed. Reg. 32901 (June 14, 2004). This single change accounts for the majority of the benefits in terms of the expected bycatch reduction improvements for the HT-CP sector, significantly exceeding any bycatch reduction gains under Amendment 79's GRS proposal.

Currently, the implementing regulations for Amendment 79 are being drafted and reviewed by NMFS ahead of formal submission for a determination of consistency with the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act" or "MSA"), 16 U.S.C. § 1801 *et seq.*, and other applicable law.

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[1] Most notably, this landing requirement creates disposal problems for the unwanted fish. Moreover, to the extent that this fish is not returned to the sea – which may not be possible due to legal constraints on ocean dumping – these forced landings represent a loss of "energy" to the marine ecosystem. In other words, this bycatch is wasted to the extent that either it could be returned alive or as a food source to other marine creatures to the extent that the unwanted fish do not survive. *See generally* Northern Economics, Inc., Assessment of Changes in IRIU Flatfish Requirements 118-23 (Sept. 2002).

III. The Legal Backdrop

A. Magnuson-Stevens Act Bycatch Requirements and Practicability

National Standard 9 states, "Conservation and management measures shall, **to the extent practicable,** (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." 16 U.S.C. § 1851(a)(9) (emphasis added). Similarly, Section 1853(a)(11) of the Act requires that any fishery management plan ("FMP") or amendment contain provisions that "include [practicable] conservation and management measures" to achieve these ends. Bycatch "means fish which are harvested in a fishery, but which are not sold or kept for personal use," *id.* § 1802(2), and "includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards." 50 C.F.R. § 600.355(c).

In the intervening years since Amendment 79 was adopted, there have been a series of important court decisions that have helped to define and clarify the MSA "practicability" standard. These cases have discussed practicability with respect to the bycatch and habitat requirements. The leading case, *Conservation Law Foundation v. Evans*, 360 F.3d 21 (1st Cir. 2004), decided a challenge to a rulemaking under the MSA on the basis that the regulations adopted to manage the Atlantic scallop fishery were not consonant with the Council's and NMFS's bycatch and habitat duties under the Act.

These claims were premised on the theory that the Council failed to enact certain area closures that the plaintiff environmental groups (Oceana and Conservation Law Foundation) claimed were "practicable" measures to minimize bycatch and adverse impacts of scallop fishing on essential fish habitat ("EFH"). *Id.* at 27-28. Plaintiffs argued that NMFS had a legal duty to impose any and all "practicable" alternatives. *Id.* at 28. In rejecting these claims, the court stated:

> T]he plaintiffs essentially call for an interpretation of the statute that equates "practicability" with "possibility," requiring NMFS to implement virtually any measure that addresses EFH and bycatch concerns so long as it is feasible. Although the distinction between the two may sometimes be fine, there is indeed a distinction. The closer one gets to the plaintiffs' interpretation, the less weighing and balancing is permitted.

Id.[2] Importantly, the First Circuit went on to note that not closing these areas would yield greater economic benefits in the short run, and any long-term economic benefits "were uncertain." *Id.* In *Blue Water Fisherman's Ass'n v. Daley*, 122 F. Supp. 2d 150 (D.D.C. 2000), the court invalidated a blanket requirement that vessels obtain and use electronic vessel

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[2] This line of reasoning was adopted and extended by the Federal District Court for the District of Columbia just this year in *Oceana, Inc. v. Evans*, 2005 WL 555416 *35 (D.D.C.). The *Oceana* decision is also notable for its holding that the practicability requirement sets a limit on the range of alternatives that need to be considered under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq. Id.*

monitoring systems ("VMS") that was imposed, in part, to enforce bycatch reduction mandates. *Id.* at 170-71. The basis for this holding was a failure by NMFS to provide sufficient justification that the measure's benefits outweighed the costs imposed on the industry. *Id.* at 171.

These cases demonstrate that, in terms of bycatch reduction, economic impact is a major component in determining the practicability of a proposed bycatch minimization measure. Moreover, these holdings are consistent with the National Standards Guidelines. For example, the guidelines for National Standard Nine state that bycatch reduction measures should be at least qualitatively determined to have net positive benefits. *See* 50 C.F.R. § 600.354(d). Moreover, such regulations must be "consistent with other national standards and maximization of net benefits to the Nation," and the agency is required to consider a variety of factors, including "[c]hanges in fishing, processing, disposal, and marketing costs." *Id.* § (3)(i). The next section discusses these other relevant standards.

B. Other Magnuson-Stevens Requirements

1. National Standard Eight

National Standard Eight requires NMFS to "consider the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities."[3] 16 U.S.C. § 1851(a)(8). It is important to note that in interpreting this requirement, as discussed below, courts have looked solely to the impacts of measures at issue on vessels, using this impact almost as a proxy for impacts on the communities in which these vessels reside. The only constraint on this requirement is that measures be "consistent with the conservation requirements of" the MSA. *Id.* When this constraint is met, there is an affirmative duty to seek to minimize adverse economic impacts of conservation measures. 50 C.F.R. § 600.345(b)(1).

Courts have, further, referred to the "balancing" the Council and NMFS must undertake between MSA conservation requirements and those of National Standard Eight.[4] In many cases, such as in *NRDC* and *RFA*, courts have found that the balance must, by the terms of the MSA, favor conservation when the issue is simply one of failing to consider certain economic impacts found by the Secretary to be unavoidable to meet overfishing and rebuilding objectives under National Standard One.[5] *NRDC*, 209 F.3d at 753-54 (finding a measure with "only an 18%

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[3] A fishing community is defined in the National Standard Guidelines as a "community that is . . . substantially engaged in the harvest or processing of fishery resources." 50 C.F.R. § 600.345(b)(3).

[4] *See Rec. Fishing Alliance* ("*RFA*") *v. Evans*, 172 F. Supp. 2d 35, 51-52 (D.D.C. 2001); *Nat'l Resources Defense Council* ("*NRDC*") *v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000); *N.C. Fisheries Ass'n v. Evans*, 27 F. Supp. 2d 650, 652 (E.D. Va. 1997).

likelihood of achieving the target F is so inherently unreasonable that it defies the plain meaning of the statute"); *RFA*, 172 F. Supp. 2d at 46 (holding that recreational fishing limits were necessary and that economic impacts were considered).

Courts have not similarly conditioned their National Standard Eight analysis, however, when the issue has involved mitigation of economic impacts with respect to MSA requirements tempered by the practicability standard. In *Blue Water*, for example, the court held that a requirement that fishermen purchase and use expensive VMS transponders in part to enforce bycatch reduction regulations violated National Standards Eight and Seven[6] because the record indicated that NMFS failed to explore less costly alternatives and the record did not support the need for the measure. 122 F. Supp. 2d at 169. In a series of cases involving the interaction of National Standard Eight and the Regulatory Flexibility Act, courts have found inadequate analysis of economic impacts of the regulations on fishing communities to be a violation of National Standard Eight. *See N.C. Fisheries Ass'n*, 27 F. Supp. 2d at 664-66; *Southern Offshore Fishing Ass'n v. Daley*, 995 F. Supp. 1411, 1437 n.35 (M.D. Fla. 1998).

Moreover, in both the *Blue Water* and *Southern Offshore* cases, the courts discussed this requirement solely in terms of the financial impacts of the measures on fishing vessels themselves. In other words, the holding in *Blue Water*, for example, did not rely on a finding that the VMS requirement imperiled the sustained participation of fishing communities separate from the vessels that supported their communities, but rather that NMFS failed to investigate mitigating alternatives. *See* 122 F. Supp. 2d at 169. The same holding was made in the second *Southern Offshore* case in discussing and reaffirming its initial National Standard Eight holding. *See Southern Offshore*, 55 F. Supp. 2d 1336, 1339-40 (M.D. Fla. 1999), *vacated on settlement* ("NMFS inadequately considered, and perhaps overlooked altogether, feasible alternatives or adjustments to the 1997 quotas that may mitigate the quotas' pecuniary injury to the directed shark fishermen.").

Indeed, courts have found fisheries regulations, even those designed to meet the strict requirement to prevent overfishing, to be invalid under National Standard Eight where the agency fails to adequately account for the economic impacts on the full range of affected vessels. In the *North Carolina Fisheries* case, for example, the court found that failure to rationally consider economic impacts of quota reductions on the potential for bankruptcy of fishing operations in specific to constitute a substantive violation of the MSA. 27 F. Supp. 2d at 665-66. In short, National Standard Eight acts as a mandate on NMFS and the Councils to fully and

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[5] It should be noted that that unlike National Standards Eight and Nine, National Standard One is not constrained by a practicability standard. That is to say, the command that NMFS "shall prevent overfishing while achieving, on a continuing basis, optimum yield" is phrased without any qualifiers and in absolute terms.

[6] "Management measures shall, where practicable, minimize costs and avoid unnecessary duplication." 16 U.S.C. 1851(a)(7).

rationally explore the economic impacts of regulations on fishing vessels and to minimize such impacts to the extent possible.

2. National Standard Seven

National Standard Seven prescribes that, "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." 16 U.S.C. § 1851(a)(7). Courts have treated this standard as requiring NMFS to attempt to calibrate the benefits with the burdens of fishery management measures, albeit not necessarily to conduct a formal cost-benefit analysis. *See, e.g., Blue Water*, 122 F. Supp. 2d at 171. It has also been held to require that the agency "give consideration to significant practicable alternatives" which minimize any attendant costs. *Id.* at 169.

NMFS regulations confirm that this national standard requires an affirmative consideration of whether management goals can be accomplished in more efficient ways. Indeed, NMFS guidelines implementing National Standard Seven state that "[m]anagement measures should be designed to give fishermen the greatest possible freedom of action in conducting business .... The type and level of burden placed on user groups by the regulation need to be identified." 50 C.F.R. § 600.340(d)(1).

NMFS guidelines also impose affirmative analytical requirements: to ensure that "[m]anagement measures not impose unnecessary burdens on the economy, on individuals," *id.* § 600.345(c), and to "demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to industry of compliance." *Id.* § (d). When such a review is conducted, the regulations explain that "[f]actors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative." *Id.* (c). In practical application, courts will examine a measure that imposes costs on the industry with respect to the benefits purported to ensue from its promulgation. Where the link between these costs and benefits are weak, that measure may be invalidated.

In *Blue Water*, for example, the court invalidated a bycatch reduction measure because NMFS had not adequately or rationally justified its costs. 122 F. Supp. 2d at 170-71. The court explained:

> NMFS has provided neither a reasoned nor a conservation-based justification for implementing the VMS regulations and associated costs upon *all* fishers carrying Atlantic HMS permits, and, unable to discern NMFS's reasoning from the record, I cannot supply one.... While NMFS must minimize costs only "where practicable [and] not absolutely," ... NMFS failed to implement practicable cost-minimization alternatives. Rather, NMFS imposed blanket VMS costs without showing how, by imposing these costs on fishers who do not operate near established time/area closures, the VMS regulations would provide conservation benefits.

Id. at 171. In sum, courts will closely scrutinize costs imposed on the industry where the benefits to be obtained are relatively minor.

C. The Regulatory Flexibility Act

Congress passed the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, to ensure that agencies would consider the impact of their regulations on small businesses. 5 U.S.C. § 601(b) (Congressional Findings and Declaration of Purpose). The law protects small businesses by prescribing a detailed process by which federal agencies must assess the economic impacts of regulatory proposals on small entities, and then develop and consider proposals to ameliorate such negative impacts. *Nat'l Ass'n of Psychiatric Health Sys. v. Shalala*, 120 F. Supp. 2d 32, 43-44 (D.D.C. 2000) (analogizing RFA's procedural analytical requirements protecting small businesses to the National Environmental Policy Act's requirements as to environmental impacts).

The principal RFA requirements are preparation of initial and final regulatory flexibility analyses ("IRFA" and "FRFA") for proposed rules and final rules. 5 U.S.C. §§ 603 & 604. The RFA sets out specific requirements and mandatory elements for preparation of a legally adequate FRFA. 5 U.S.C. §§ 604(a)(2), (3), (4), & (5).

The RFA's judicial review provisions, at 5 U.S.C. § 611(a)(1)-(2), allow a small business (or an association of the same) to seek judicial review of an agency's development and preparation of a FRFA. The RFA's extensive procedural mandate is detailed in *Southern Offshore Fishing Ass'n v. Daley*. 995 F. Supp. 1411, 1433-35 (M.D. Fla. 1998). That court explained that, "I am mindful that the RFA does not require mechanical exactitude. However, the statute compels the Secretary to make a 'reasonable, good-faith effort,' prior to issuance of a final rule, to inform the public about potential adverse effects of his proposal and about less harmful alternatives." *Id.* at 1437 (quoting *Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 114-15 (1st Cir. 1997)).

As mentioned above, several courts have invalidated fishery regulations where the analysis of economic impacts were found to be either inadequate or implausible. *See, e.g., N.C. Fisheries Ass'n*, 27 F. Supp. 2d at 664-66; *Southern Offshore Fishing Ass'n v. Daley*, 995 F. Supp. at 1437 n.35 (M.D. Fla. 1998).

IV. Discussion

One of the first issues which arises from an examination of Amendment 79 is that, in relation to the recognized hardship the measure imposes on certain sectors of the fishery, the expected gains in terms of bycatch reduction are astonishingly small, estimated to be on the order of a few percentage points.[7] The second issue relates to the fact that despite analysis which shows vessels with smaller hold and processing capacities will likely not be able to make the

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[7] For example, analysis of a GRS of 70 percent was estimated to lead to an increased retention of about five percent overall. Amendment 79 Public Review Draft at 45-47 (May 20, 2003). However, all of these gains were expected to result from the change in the MRA, which has already been put into effect. *Id.*; *see also* 69 Fed. Reg. at 32901.

necessary modifications to comply with Amendment 79 in a cost-effective manner, the Amendment chose to focus its "fix" on length instead of capacity. Finally, and perhaps most importantly, it is recognized that none of these impacts need necessarily be endured. A regulatory solution in the form of Amendment 80 is currently pending. Indeed it was the intent of the Council that the GRS regulations and rationalization should be, to the extent possible, developed in conjunction, and only by happenstance was it that the bycatch policy got out so far ahead. These issues are explained in greater depth below.

However, the first issue addressed is the decision by NMFS to apply the size standard for fishing vessels to HT-CP vessels.

A. Catcher/Processor Vessels Should be Considered Under the Standards of Land-Based Processors for Purposes of Regulatory Flexibility Act Analysis

As an initial matter, it should be emphasized that we strongly disagree with NMFS's decision to use the size standard applicable to catcher vessels for purposes of measuring compliance with the Regulatory Flexibility Act ("RFA"), 5 U.S.C. § § 601-612, with respect to catcher/processor vessels. "The RFA requires administrative agencies to consider the effect of their actions on small entities, including small businesses . . . ." *Northwest Mining Ass'n v. Babbitt*, 5 F. Supp. 2d 9, 14 (D.D.C. 1998). As noted above, NMFS's duties with respect to small businesses under the RFA can be quite stringent, including the consideration of alternatives which minimize the economic impacts of a proposed regulation.

In Amendment 79, the Council made the determination that none of the HT-CP vessels were small businesses because they "have annual receipts in excess of $3.5 million and/or are owned by businesses with annual receipts in excess of $3.5 million." Amend. 79 Public Review Draft at 74. However, the standard which applies to processors is whether the entity has 500 or fewer employees.[8] *Id.* The decision to treat the HT-CP vessels as if they were the same as catcher vessels – which had the effect of making the entire fleet ineligible for consideration as small businesses – was patently arbitrary.

Catcher/processor vessels, unlike catcher vessels, have employees for whom they withhold taxes and pay payroll taxes. Moreover, these vessels conduct value added processing operations *in addition to* harvesting operations. These entities are capital intensive and result in additional expenditures not borne by catcher vessels, such as licensing costs, packing and shipping materials, shipping, and added insurance. This value added processing has the effect of adding gross revenues which are simply not comparable to catcher vessels alone.

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[8] Of course, it is understood that the affiliation rules apply in making the determination as to whether a catcher/processing vessel should be considered a "small business" for the purposes of the RFA. *See id.* at 71-72 (discussing the definition of a "small business concern"). The test, however, should be whether all affiliated entities, in total employ 500 or more workers.

Moreover, it is our understanding that the Small Business Administration has notified the agency that the wrong standard has been applied. Even if this were not the case, however, such determinations are judicially reviewable under the Administrative Procedure Act standard of review. *See* 5 U.S.C. § 611(a). Any determination found to arbitrary and capricious may be overturned. *Id.* For the reasons stated above, we believe that a court would find that the appropriate standard for determining whether HT-CP, and all other catcher/processors vessels are small businesses are those that apply to processors, *i.e.*, those with fewer than 500 employees. Accordingly, the analysis which follows will assume that the RFA applies to this sector.

B. Amendment 79, as it Stands, May Not Be a Practicable Bycatch Reduction Alternative

As explained above, the practicability standard relating to bycatch reduction measures is a flexible one. In performing the required analysis to determine the practicability of a bycatch minimization measure, however, careful attention should be paid to the relative level of costs a measure imposes, the distribution of these costs, and the expected benefits, generally measured in terms of increased productivity of managed stocks.[9] Moreover, National Standard Nine, requiring bycatch minimization, does not stand alone. It is but one of ten such standards which must be weighed balanced by the agency and a council. Only National Standard One has been held to impose a sometimes superior duty which can, in certain instances, supervene other of the national standards. *See, e.g., NRDC*, 209 F.3d at 753.

As explained above, these other requirements include the minimization of negative economic impacts (National Standard Eight) and to minimize costs and avoid unnecessary duplication (National Standard Seven). In essence, the confluence of these duties, and the way these mandates have been interpreted by the courts, suggests that implementation of the bycatch retention standards ahead of the mitigation measures may receive heavy scrutiny from a court. Specifically, Amendment 79 recognizes that some of the smaller capacity HT-CP vessels "will likely be forced to exit or decrease their participation in the BSAI Pacific cod and flatfish fisheries." Amend. 79 Public Review Draft at 69. In light of the small gains, and the fact that a new amendment is currently in development that would make such impacts unnecessary, it does not appear that – at least as to these most affected vessels – this regulation meets the test of practicability.

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[9] Although a council or NMFS may look at the impacts of a fishery on bycatch or, for that matter, on habitat generally, the law and regulations direct councils and NMFS to make determinations regarding practicability in terms of the costs and benefits to the managed stocks. In other words, would reducing bycatch help lead to greater fishery resources to help contribute "to the food supply, economy, and health of the Nation?" 16 U.S.C. § 1801(a)(1).

Indeed, standing on its own, it is not clear that a measure which is solely designed to reduce bycatch that has the recognized impact of bankrupting current fisheries participants, can meet the practicability threshold. Generally speaking, courts have recognized that certain dislocations are necessary to meet conservation goals of the MSA when stocks are in need of rebuilding. However, in the BSAI, no species are overfished, and, more to the point, Amendment 79 itself concedes there are no conservation benefits from the GRS. Amend. 79 Public Review Draft at 24. As explained above, moreover, the MRA, which accounts for the vast majority of expected bycatch reduction benefits, has already been established. Thus, the costs of imposing these standards ahead of rationalization are accompanied by almost no or almost no benefits.

It would be a unique and interesting case should a participant in a sustainably managed fishery be faced with such economic burdens from a bycatch reduction measure that the participant was forced to retire from the fishery. For one, courts view economic burdens of a regulatory measure from the perspective of individual person or entity when determining whether the agency has met its responsibilities under the RFA and National Standard Eight, as *Blue Water* makes abundantly clear. Thus, the analysis in Amendment 79, which focuses on the likelihood of "communities" being severely impacted misses the point.[10] The fact is that such fishing communities as Dutch Harbor, which rely on the economic activity generated by the HT-CP sector, would be harmed if a number of these vessels were forced to exit the industry. The proper issue is whether there are means by which these impacts could be minimized, and, as shown below, such alternatives do exist.

Second, forcing vessels to exit the fleet as a means of reducing bycatch runs counter to the essential purpose of the MSA, which is to ensure that optimum yield is obtained on a continuing basis. 16 U.S.C. § 1851(a)(1). In this regard, *Oceana*, although it was referring to "practicability" with respect to the EFH mandates, is instructive. There the court stated, "EFH must be protected to the extent *practicable*, and in a manner consistent with MSA's overriding principle that conservation measures should achieve OY from the fishery on a continuing basis, which may become more difficult the greater the closures." *Oceana*, Civ. No. 04-811-ESH, *slip op.* at 70 (citations omitted).

Likewise, Amendment 79 would force participants to leave the fishery despite the fact that for many of the fisheries in which the HT-CP vessels participate, the conservatively set TACs are often not achieved. This does not appear to meet the test of practicability, nor does it appear to be in concert with the MSA's "overriding principle."

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[10] *See, e.g.*, Amend. 79 Public Review Draft at 68 (discussing compliance with National Standard Eight, stating, "None of the alternative actions considered are expected to have a significant individual or cumulative effect *on the sustained participation of any fishing community*") (emphasis added).

C. Amendment 79 Irrationally Fails to Exempt Vessels With a Length Overall Greater than 125 Feet That Will Not Survive Economically

The heart of judicial review under the Administrative Procedure Act is consideration, under a deferential but "searching" standard, whether a particular regulatory decision has a reasoned basis and is rationally related to the goals that the rule is meant to promote. *Blue Water*, 122 F. Supp. 2d at 158-59. Where such a nexus is lacking, the regulation under review is "arbitrary and capricious" and will not be enforced. *Id.*

Amendment 79 is geared toward creating incentives for vessels to reduce bycatch by raising the costs of fisheries with high levels of bycatch. Such an approach is novel, but must be carefully administered and calibrated. Indeed, the Council and NMFS realized that relatively smaller vessels in the HT-CP sector would not be able to conduct financially viable operations under these GRS regulations because these vessels lacked the hold and processing capacity to be able to meet the full utilization requirements. Amend. 79 Public Review Draft at 75. The draft amendment recognized these vessels would be disproportionately and unreasonably adversely impacted. *Id.* Sensibly, an exemption was created in order avoid these types of recognized hardships.

Unfortunately, the solution chosen fails to respond to the problem which the exemption is meant to address, *i.e.*, vessels with insufficient capacity to operate profitably under the proposal. As the Amendment 79 economic analyses and NMFS's data demonstrate, the measure chosen to define the population of vessels that might be disproportionately harmed by Amendment 79 – that is, those whose length overall ("LOA") is 125 feet or less – is not rationally related to purpose of the exemption.

In other words, there are vessels which would be exempted under the proposal whose hold capacity exceeds vessels that have a slightly greater LOA. *See, e.g., id.* at 55 (fig. 11) (showing that some vessels in excess of 125' LOA have lower annual catches than shorter vessels). This information is contained within the analyses prepared for the Council in support of the proposed amendment, and this issue was also raised by members of the public during the comment period and hearings on the proposal. Perhaps at the time the amendment was passed, this seemed like less of a pressing issue because the rationalization proposals in Amendment 80 were expected to follow quickly. However, at this stage, Amendment 79 is on a track for possible implementation in 2006, while the timing of Amendment 80 is highly uncertain. This means that a number of vessels recognized as vulnerable under the rules will, indeed, suffer harm while awaiting the fix that everyone hopes and expects will follow in due course.

Under these circumstances, it is quite possible that a court could find that failure to exempt vessels whose inability to withstand the economic impacts of the new rules exactly equal to other vessels that have been exempted is arbitrary and capricious. In this context, a court might conclude that by focusing on LOA, rather than the relevant criteria – capacity – was an irrational decision, particularly given that the data to make a reasoned decision was readily available. Finally, the fact that a more desirable regulatory solution in the form of Amendment 80 is on the horizon might support a court's determination on this issue were it to be presented.

V. Conclusion

Given the legal uncertainties detailed above, we would strongly suggest one of two equally satisfactory alternatives:

The first would be to delay formal submission of Amendment 79 until Amendment 80 has been finalized and likewise submitted for review. The second would be to reopen Amendment 79 in order to develop an alternative such as raising the GRS exemption limit on HT-CP vessels' LOA to 135 feet (or whatever length would insure that all vessels with the limiting capacity are exempted). Should the former course be adopted, the Council would very easily be able to make the adjustment and resubmit the plan without losing the momentum being built up in the process of the development of the implementing regulations.

Either course would ensure that the Council's objectives to create incentives to reduce bycatch move forward expeditiously and in a manner consistent with applicable law.

AGENDA B-2
JUNE 2005
Supplemental

Groundfish Forum

4241 21st Avenue West, Suite 200
Seattle, WA 98199
(206) 213-5270 Fax (206) 213-5272
www.groundfishforum.org

May 25, 2005

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RE: Agenda Item B-2, BSAI Amendment 79

Dear Madam Chair,

This letter is on behalf of the members of Groundfish Forum, representing over 90% of the capacity of the non-AFA trawl catcher-processor sector in the BSAI. The sector is the only one which will have to comply with the Groundfish Retention Standard (GRS) which is established by Amendment 79 to the BSAI FMP. We are writing to comment on both the implementation date and the initial GRS percentage for this Amendment. We request that the Council take action to delay implementation of Amendment 79 until Amendment 80 (BSAI non-AFA trawl CP rationalization) is implemented, and to then begin with a retention rate of 65%.

History of Amendment 79

BSAI Amendment 49 mandated full retention of pollock, cod, yellowfin sole and rock sole. Recognizing that meeting this requirement for flatfish would be very difficult if not impossible at the time, the Council delayed implementation of that part of the Amendment until 2003. As the deadline approached, the Council recognized that the fleet which targets yellowfin and rock sole (the non-AFA trawl catcher-processor sector), having made significant improvements in retention, would nonetheless be unable to meet the 100% requirement. The Council then approved BSAI Amendment 75, which would have postponed the deadline by 18 months. Subsequently, the National Marine Fisheries Service determined that requiring 100% retention of yellowfin and rock sole was 'impracticable' (as shown in the Council's own analysis) no matter when it happened, and extended the implementation date indefinitely.

The Council recognized that rationalization was the key to improving retention in our fleet, and that only by removing the race for fish could vessels afford to fish more selectively and to utilize more of the catch. Thus, it began developing a rationalization plan coupled with a groundfish retention standard, which would both mandate retention and provide the tools with which to achieve the mandate. There were repeated statements by the Council that the two elements (rationalization and the retention standard) were intended to work together.

In June of 2003, the Council approved a phased-in groundfish retention standard (Amendment 79), starting in 2005, without a rationalization package. The Council at that meeting put rationalization on a 'fast track' for final action in June of 2004. Since that time, passage of the rationalization component (now Amendment 80) has been repeatedly delayed through no fault of the H%G sector. The following table, which you have seen before, illustrates the continued delays.

Council Meeting	Initial Review and Final Action Dates								
	Feb '04	Apr '04	Jun '04	Oct '04	Dec '04	Feb '05	Apr '05	Jun '05	Oct '05
Jun '03	I		F						
Oct '03	I								
Dec '03		I	F						
Feb '04			I	F					
Apr '04				I	F				
Jun '04						I			
Oct '04						I	F		
Dec '04							I	F	
Feb '05								I	F
IR = Initial Review									
FA = Final Action									

Source: North Pacific Fisheries Management Council website

Implementation of Amendment 79 has also been delayed due to extended review and refinement. At this point, we are told it will be published as a proposed rule within the next several months.

In short, the Council's stated intent in 2003 was to have both the GRS and the rationalization package finalized and implemented quickly. The separation of these two items, and the delay in both, has created a twofold problem.

First, we are facing the possibility that the GRS will be implemented before we have the ability to coop. Secondly, when Amendment 79 was passed the Council explicitly tied the retention percentages with particular years (2005 at 65%, 2006 at 75%, 2007 at 80% and 2008 at 85%). Since the initial implementation date has passed, the Council and NMFS need to determine what the retention requirement should be when it is implemented.

Implementation of Amendment 79

The real problem is that the non-AFA trawl CP sector still does not have the ability to co-op, and will not have this until Amendment 80 is passed and implemented. Without this ability, the sector does not have the tools with which to meet the retention standard no matter when it is implemented.

Amendment 79 imposes very significant costs on the non-AFA trawl CP sector. Vessels are required to install flow scales, and to increase observer coverage to 200%. The actual costs are increased by the need to carry spare parts (or even spare scales), and by the loss of one crewman to provide bunk space for the extra observer. These costs are imposed with no benefit to the vessel whatsoever, and as determined by the Council's analysis, with no benefit to the nation.

The physical and operational changes required to meet Amendment 79 will focus on retaining as much as is 'practicable' while still racing for fish. This is completely different than the systems which will be used once vessels are able to coop under Amendment 80, and are no longer racing. Thus, *if Amendment 79 is implemented prior to Amendment 80, vessels will face two factory refits in a very short period of time.*

In addition, we have to assume that the buyback legislation which has already been approved will result in a consolidation of this fleet, just as the American Fisheries Act resulted in consolidation of the pollock fleet. This means that some vessels will go through the expense of re-tooling their factories to meet the GRS, even though they may leave the fishery as soon as the following year. Further, the cost of buying out these vessels will be increased because of this refit.

National Standard 7 of the MSA specifically states that 'Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.' Clearly the cost of implementing Amendment 79 prior to Amendment 80 would violate this standard.

The starting retention percentage

The H&G fleet is a widely diverse group of vessels of different sizes and capacities, which fish very different fisheries with varying levels of discard. While the 'average' retention may be around 70%, this number includes both high-retention fisheries such as Atka mackerel which are conducted by large vessels in remote locations and flatfish fisheries which are often conducted by much smaller vessels with very limited processing and hold capacity. The average does not indicate how wide this variation is, nor the fact that it depends largely on the size of the vessel and the fishery it is in.

Clearly the Council intended to start the retention standard at 65%. NMFS enforcement, the observer program and the fleet itself will have to institute protocols for sampling and verification to determine if the standard is being met. There are numerous variables involved, including how to account for non-groundfish catch and how to accurately calculate the round weight of the groundfish itself. Certainly other complications will arise as the program is implemented. Starting out with a rate which may be achievable will allow these problems to be identified and resolved, without the added difficulty of trying to address perceived violations. The credibility of the program will suffer if there is not a sound, proven method for monitoring the standard in place before the requirements are tightened.

In summary

The Council has repeatedly stated that it desires to continue to reduce the level of discards in the North Pacific fisheries, and that it recognizes rationalization to be a necessary tool in the process. Amendments 79 and 80 were originally part of the same package to both require increased retention by the non-AFA trawl CP fleet and to provide the means to meet that requirement. The only way to meet the original stated intent of these two actions is for both of them to be implemented simultaneously, and to begin at the retention rate of 25% originally proposed for the start of the process.

Thank you for the opportunity to comment.

Sincerely,

T. Edward Luttrell
Executive Director

Non AFA H&G BSAI retained and discarded
From catch accounting system (5/16/05)
No confidential data

2003		
Retained	187,924	70%
Discarded	82,314	30%
Total	270,262	

SPECIES	MT	R or D
AKPL	9,421	D
AKPL	24	R
AMCK	11,705	D
AMCK	40,338	R
ARTH	6,437	D
ARTH	3,313	R
FLO5	1,366	D
FLO5	959	R
FSOL	2,668	D
FSOL	8,885	R
GTRB	154	D
GTRB	681	R
NORK	4,359	D
NORK	188	R
OTHR	5,791	D
OTHR	1,748	R
PCOD	715	D
PCOD	29,240	R
PLCK	13,081	D
PLCK	13,132	R
POPA	2,100	D
POPA	10,834	R
ROCK	161	D
ROCK	265	R
RSOL	13,753	D
RSOL	19,231	R
SABL	48	D
SABL	134	R
SQID	46	D
SQID	1	R
SRRE	20	D
SRRE	135	R
YSOL	10,487	D
YSOL	58,840	R

2004		
Retained	201,379	67%
Discarded	97,633	33%
Total	299,012	

SPECIES	MT	R or D
AKPL	7,256	D
AKPL	7	R
AMCK	10,632	D
AMCK	43,774	R
ARTH	11,306	D
ARTH	3,350	R
FLO5	2,605	D
FLO5	1,379	R
FSOL	3,509	D
FSOL	10,681	R
GTRB	219	D
GTRB	405	R
NORK	3,826	D
NORK	350	R
OTHR	6,115	D
OTHR	1,450	R
PCOD	431	D
PCOD	37,546	R
PLCK	19,245	D
PLCK	16,282	R
POPA	1,882	D
POPA	8,780	R
REYE	69	D
REYE	91	R
ROCK	143	D
ROCK	240	R
RSOL	18,852	D
RSOL	25,040	R
SABL	77	D
SABL	204	R
SQID	34	D
SQID	1	R
SRKR	46	D
SRKR	37	R
YSOL	11,387	D
YSOL	51,763	R

ALASKA LONGLINE FISHERMEN'S ASSOCIATION
403 Lincoln Street, Ste. 237 Sitka, AK 99835

May 24, 2005

Dear Members of the Council,

Attached please find ALFA's comments on the VMS requirement for Southeast longline vessels proposed in the Essential Fish Habitat EIS. They are addressed to the National Marine Fisheries Service, since the Council has not been asked to comment. ALFA members appreciate your attention and comment on this issue.

Thank you.

Linda Behnken

ALASKA LONGLINE FISHERMEN'S ASSOCIATION
403 Lincoln Street, Ste. 237 Sitka, AK 99835
phone: 907 747-3400
email: alfafish@ptialaska.net

May 24, 2005

Dr. James Balsiger
NMFS/NOAA
PO Box 21668
Juneau, AK 99802-1668

Dear Dr. Balsiger,

On behalf of the Alaska Longline Fishermen's Association (ALFA), I would like to submit the following comments on the preferred alternative 5C included in Chapter 2 of the Essential Fish Habitat EIS: requiring VMS on all fishing vessels using bottom contact gear.

ALFA strongly opposes requirements for VMS on Gulf longline vessels, and objects to the backdoor process that has been used to introduce this proposed requirement. ALFA has participated in the EFH and HAPC process for close to 10 years. Throughout that time no one ever mentioned the possibility of attaching to this initiative a VMS requirement. The introduction of this requirement after Council action as an alternative embedded in an enormous habitat document is unacceptable, at best. Considering that the document provides very little analysis of overall costs associated with requiring VMS and no assessment of the more individual costs that would be imposed on smaller vessels and/or operators holding very small amounts of quota, the proposed requirement is inexcusable and should be stricken from the document.

Perhaps some background on ALFA's membership would assist the Agency and NMFS enforcement in the decision making process. ALFA's membership is composed of vessel owners who target halibut and sablefish from vessels ranging in size from skiffs to halibut schooners. Most of our members own and operate vessels less than 60 feet in length, and many fish from troller/longline combination vessels that are less than 50 feet. While halibut fishing is a crucial part of ALFA members' annual income, many members hold relatively small amounts of quota. A fair number of these vessel owners are currently paying off loans accrued from purchasing quota. ALFA's approximately 65 members are representative of the Southeast longline fleet, and not too unlike the halibut fleet fishing throughout the Gulf. In sum, for many the profit margin is slim, with salmon markets just starting to recover from a decade long slump and the cost of shares requiring substantial investments. This is not a fleet that can universally swallow the costs associated with VMS without choking, particularly when no one has demonstrated a need for this level of enforcement, adequately assessed costs, nor provided the public with adequate notice that such an onerous requirement is being considered.

While ALFA has long championed resource conservation and paid particular attention to protection of benthic habitat, members do not support the bottom fishing closures proposed for Southeast Alaska. Our reasons for not supporting the closures have just been validated by this VMS proposal—the unintended or at least unannounced consequences associated with closing areas with no demonstrated need. Submersible observations in the proposed Southeast HAPC reported largely intact and healthy corals, despite the fact that longliners have fished around these areas for over 100 years. Either longline gear poses no significant threat to these areas or longliners avoid these corals with adequate care such that a closure is clearly unnecessary. In either case, requiring expensive and intensive monitoring systems to enforce an unnecessary closure around areas that longliners avoid anyway is all but irrational.

While the EIS includes sparse data on the overall cost to the fleet of requiring VMS, no effort is made to assess the relative costs assumed by small vessels, nor is there a discussion of the

problems associated with repairing units that break down, other than to note that the units are more likely to experience problems if installed on smaller vessels. Sitka is one of the larger fishing ports in Southeast. Nonetheless, there are only two people in town currently available to repair marine electronic equipment. During the fishing season, these two work exceptionally long hours keeping the fleet's radars, autopilots and GPS operable. If longline vessels are not allowed to leave the dock without a working VMS, then boats are likely to sit at the docks for days if not weeks waiting for repair assistance. Sitting at the dock with bait rotting on the hooks, ice melting, unload appointments missed, etc.. Now consider the problems fishermen with broken VMS in the small communities or villages will experience, where no one can fix the units, plane service is limited and it's a two day run to any repair shop, which is, of course, already over-booked. Has anyone in NMFS enforcement assessed these costs?

The VMS requirement for Southeast longline vessels brings to mind the now repealed requirement that IFQ holders remain on board their vessel until the vessel is unloaded. As NMFS enforcement may recall, that requirement led to unnecessary hardships, including a Sitka native elder spending a night in his open skiff, tied to the dock, sleeping in full raingear next to his tote of halibut. Longliners struggled to comply with this requirement for close to a year before it was finally repealed. Equally unacceptable hardships would be imposed with this requirement.

In closing, ALFA members object to the lack of process, the cost, and the assumption of need associated with requiring VMS on Gulf or Southeast longline vessels. To embed a requirement for an expensive and problematic piece of equipment in a large habitat document in the eleventh hour of a lengthy process with little analysis and even less opportunity for public comment is bad enough. To do so when no one has established either the need for closing the proposed Southeast HPAC to longline gear or the need to intensively monitor longline activity near the closed areas betrays reason. ALFA members strongly recommend that the VMS requirement on Gulf or Southeast longline vessels be stricken from the document and dropped from further consideration.

Thank you for the opportunity to comment.

Sincerely,

Linda Behnken
(Director, ALFA)

FISHING VESSEL OWNERS' ASSOCIATION
INCOPORATED

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May 19, 2005

Ms. Stephanie Madsen, Chairwoman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RE: VMS for EFH & HAPC

Dear Chairwoman Madsen:

This letter is in response to action that may be taken regarding the requirement of VMS coverage in the Aleutians and Gulf of Alaska in order to enforce EFH and HAPC regulations. The Fishing Vessel Owners' Association (FVOA) has 95 vessels in our membership, all of which hold and fish either sablefish or halibut IFQs off Alaska. All of our members hold some IFQs in the Gulf of Alaska.

The members of the Association are not convinced of the enforcement need to require VMS, either in the Aleutians or the Gulf of Alaska for fixed-gear operations. In the Aleutians, the Council has recommended six (6) specific areas as closed to all gears having contact with the ocean bottom. If the Council chooses to require all vessels operating in the Aleutians to have VMS in this area, we request the Council confirm with enforcement that the use of VMS in the halibut IFQ fishery will eliminate the need to physically clear through certain ports in the Aleutians and Bering Sea. This could be a savings in time for many of the vessels.

The Association does not agree with NMFS for a VMS requirement for EFH or HAPC enforcement in the Gulf of Alaska. The NMFS' letter of March 31, 2005, attempts a justification in the Gulf by stating:

"EFH and HAPC in the GOA are far offshore and located throughout the Gulf in a manner that makes enforcement difficult."

The areas designated as EFH and HAPCs in the GOA for areas in the South Peninsula, Chignik, Kodiak, and Central GOA are not applicable to fixed-gear fisheries. All of these areas are closed to bottom trawling. **There is nothing to enforce from a fixed-gear perspective.** NMFS' justification relative to fixed gear does not exist for the EFH and HAPC areas recommended by the Council.

The areas designated closed to all fishing in the GOA, because they are pinnacles, are hardly a rationale to require VMS. All but two of the pinnacles are in depths that fixed gear does not fish in. The other two areas, though fished on occasion in the past, are not commercially productive. All of the pinnacles are outside the continental shelf and are not viable commercial fishing areas. The NMFS is overstating the need for VMS, in our opinion, relative to these HAPC areas.

The NMFS letter suggests the need for VMS will cost 635 additional vessels $984,000.00. The annual NMFS Restricted Access Management report shows 1300 vessels fishing for halibut IFQs. If the request to have a VMS in the GOA is adopted, all of these vessels will need to install a VMS. Some of these vessels operate in the Pacific Cod fishery and may have a VMS unit for sea lion enforcement. We suspect the NMFS data is low on the actual number of new installations that will be required and the overall cost to the fleet will be higher.

In summary, the members would like confirmation, should the Council advise to have VMS in the Aleutians, that the VMS will eliminate the clearing requirement for Halibut IFQ operations. Second, the Association does not support VMS in the GOA for Pinnacle areas, Chignik, Kodiak, or West Yakutat. The justification given by NMFS is non-existent relative to alleged pinnacle fishing and the areas on the shelf which are not closed to fixed gear.

Sincerely,

Robert D. Alverson
Manager

RDA:cb

Gerry Merrigan
B-2 (VMS)

VMS and EFH/HAPC

	AI	GOA
Closed Area: NPT gear	279,454 sq. mi. or	2,754 sq. mi.
% of Fishable Waters Closed NPT	58.86 %	2.6%
Closed Area; All Bottom Contact	146 sq. mi.	13.5 sq. mi.
% of Fishable Waters Closed, All Bottom Contact	0.35%	0.013%
Number of Vessels (Federal Waters, 2003)	168	928
Number of Vessels using NPT Gear (Federal Waters, 2003)	46 (27%)	98 (11%)
Number of Vessels using Fixed Gear (Federal Waters. 2003	122 (73%)	830 (89%
Number of Vessels with VMS (Federal waters, 2003)	96 (57%)	293 (32%)
Number of Vessels (State waters only)	? (Not included in analysis, assumed to have surrendered FFP).	558 (halibut vessels, analysis assumes FFP will be surrendered)
Number of Vessels with VMS (State waters)	? (Analysis assumes zero.)	? (Analysis assumes zero).
Total Number of Vessels	168 (73% fixed gear)	1486 (93% fixed gear)
Total Number of Vessels with VMS	96 (or 57%)	293 (20%)

1.) Extremely poor public process and notice. Failure to use existing Council process for public input. Failure to use NEPA process for public input. Extremely poor precedent and will contribute to and reinforce public mis-trust of governing bodies.
2.) Failure to examine reasonable alternatives (or any alternatives). Inadequate analysis.
3.) Management measure disproportionate to issue. Sledge hammer approach to a fly-swatter problem. No other reasonable alternative is considered
4.) Enforcement Considerations for NOAA Fisheries and NPFMC Council Staff, developed by NOAA Fisheries Enforcement and USCG.

a.) Page 6: Matrix Defining the Enforceability of Fishery Management Measures "*Closed Areas: At Sea Ship = Reasonable. At-Sea Aircraft = Reasonable.*"

b.) Page 10: "*Closed Areas: Easy to document presence in the closed area by aircraft overflight and over the horizon cutter monitoring. Very easy to monitor with VMS. However, even with VMS cueing, a response asset is generally required to document the violation for prosecution.*"

C. MERRIGAN