MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: September 10, 1996

ESTIMATED TIME

8 HOURS

SUBJECT: BSAI Improved Retention and Utilization Program

ACTION REQUIRED

Final decision on BSAI IR/IU program.

BACKGROUND

At the June meeting in Portland the Council reviewed, and released for public review, the analysis (EA/RIR) for the Improved Retention and Utilization initiative. That analysis covers the pollock, Pacific cod, yellowfin sole, and rock sole fisheries in the BSAI. The analysis was released for public comment in early July, and contains the primary alternatives, elements, and options listed under Item C-2(a). The primary decision points are (1) determination of the fisheries in which retention of the subject species will be mandated, and (2) the disposition (utilization options) for that fish which is retained. A third major decision point is whether to delay, in some manner, the inclusion of the flatfish species in the initial IR/IU program. Item C-2(b) is a revised Executive Summary of the analysis and will be discussed by Dr. Queirolo, the lead analyst for this initiative.

The Council's action in June included direction to its IR/IU Industry Committee to meet prior to a final Council decision, review any written comments received, and to formulate its own comments for Council consideration at this meeting. The Committee met on September 5-6 in Seattle and produced the report contained under Item C-2(c). Committee Chairman Joe Kyle is available to report to the Council at this time. As is mentioned in the report, follow-up analyses still need to be developed for the Gulf of Alaska fisheries and for the proposal to allow limited processing by catcher vessels. It is expected that these analyses can be developed and acted upon by the Council in time for concurrent implementation in 1998.

Written comments received on this issue are under Item C-2(d).

Improved Retention/Utilization in the BSAI Groundfish Fisheries

Retention Option 1 (Target Fishery Based):

Subject Fisheries (includes all gear types in these fisheries)

1. pollock (bottom and mid-water)
2. rock sole
3. Pacific cod
4. yellowfin sole

Suboption A:

100% retention standard applies only to target species in the respective fisheries.

Suboption B:

100% retention standard applies to all target species (i.e., pollock, rock sole, p. cod, and yellowfin) taken in each of the respective fisheries.

Retention Option 2 (Species Based):

100% retention of all subject species in all BSAI groundfish fisheries

Subject Species

1. pollock
2. rock sole
3. Pacific cod
4. yellowfin sole

Utilization Options:

Option 1: Target species/subject species may be processed into any form. Product form could be meal or any other form, regardless of whether or not product is fit for human consumption.

Option 2: Target species/subject species must be processed into human consumptive form, based on a percentage of total round weight of harvest of target/subject species. Options for analysis of the minimum percentage of target species harvest which must be processed for human consumption are:

Suboption A: 50%
Suboption B: 70%
Suboption C: 90%

Option 3: Reduction of target/subject species harvests to meal is limited to a maximum meal production rate for each target/subject species. Options for analysis of the maximum meal rate are:

Suboption A: 50%
Suboption B: 30%
Suboption C: 10%

SUMMARY REPORT to the NPFMC

Improved Retention and Utilization (IR/IU) Committee

September 5-6, 1996
Seattle, WA

The IR/IU industry Committee met on September 5-6 with the following persons in attendence:

Committee Members: Joe Kyle (Chair), John Henderschedt, Vince Curry, Chris Blackburn, Bob Mikol, Thorn Smith, Paul McGregor, John Iani, Steve Hughes

Agency: Clarence Pautzke, Chris Oliver, Lew Quierolo, Dave Colpo, Kent Lind, Connie Sathre, Susan Auer, Steve Myer, Vince O'Shea, Bill Karp, Earl Krygier, Seth Macinko, Pat Livingston, Jay Ginter

Public: John Roos, Brent Paine, Tim Meintz, Joe Plesha, Denise Fredette, Laura Jensen, Teresa Kandianis, Greg Baker, Keith Bruton, Mike Zabco, Mike Green, Jan Jacobs, Christian Assay, John Gauvin

The meeting started by reviewing the two written comments received to date (one from AMCC and one from NOAA GC). Then each Committee member provided initial thoughts and comments on the overall IR/IU initiative. The Committee then identified and addressed the following specific issues:

SPECIFIC ISSUES AND COMMITTEE RECOMMENDATIONS

[* indicates a 'first order' issue - must be resolved prior to initial implementation]

NOAA GC Comment - Use of PRRs for accounting/monitoring (*)

The Committee reviewed a letter from NOAA GC which highlighted the use of PRRs as a potential deficiency in the IR/IU program. The NOAA GC comment did not pose the issue as a 'show-stopper', but described the difficulties associated with using secondary data sources to determine PRR compliance. While not ideal for accounting and monitoring compliance, the Committee feels that the use of PRRs for determining utilization compliance is both necessary and acceptable - fisheries are now managed with the use of PRRs and their use on an individual vessel basis should be sufficient to detect egregious violations. It is understood that the retention aspect may be monitored with more direct methods, and that the regulations will contain an explicit prohibition on discarding the subject species.

AMCC Comment - Measuring Effectiveness of IR/IU

The letter from the Alaska Marine Conservation Council (AMCC) focused on the ability to have a

meaningful IR/IU program - one which can be monitored and for which measurements of effectiveness can be made. For example, the AMCC letter questions whether the program will actually reduce bycatch of unwanted species in other target fisheries, and expresses concern that there is no explicit mechanism for assessing whether such bycatch reductions have actually occured. The Committee, and agency representatives, feel that there does exist the ability to assess changes in catch compositions, bycatch rates, and processed products in order to assess the down-stream effectiveness of this program.

Use of scale weight measurement

Related to the issue above, the Committee discussed the potential requirement for weighing of all fish under the IR/IU program. The inexact nature of PRRs was viewed in the context of other imperfections in the management system, such as determination of removals and even determination of TAC levels. Although the use of PRRs will still be necessary to account for the utilization aspect of this program, the use of scales or other methods potentially superior to PRRs, such as volumetrics, would help provide a more accurate base (of initial removals) to account from. It was noted that NMFS is involved in an ongoing assessment of scale weights and volumetrics. It was also noted that, even with the use of scales, species composition estimates would still have to be used, so certainty of accounting by species is not insured by using scales. The EA/RIR indicates no significant advantage to a scale requirement, for purposes of the IR/IU program.

Regulatory Discards/Directed Fishing Standards

The Committee's original recommendation to the Council, consistent with advice from NMFS fisheries managers, was that DFS would still have to be used to manage the groundfish fisheries and that, at some point in time, regulatory discards would become necessary when a species goes to bycatch or PSC status. Although such discarding runs counter to the underlying intent of this progam, the Committee still recommends this as the only viable solution at this time. The amount of regulatory discards under this scenario is likely to be relatively insignificant compared to the savings in economic discards, particularly as DFS are fine tuned to more accurately reflect changing species catch compositions. NMFS in-season managers indicated that fisheries would continue to be managed with the goal of minimizing regulatory discards.

Alternatives such as mandatory retention and forfeiture to the government are not legally acceptable at this time, and would be overly burdensome on limited enforcement resources in any case. Another alternative would be to use the 'least common denominator' approach, and close all fisheries when the TAC is reached for any particular species - the Committee found this to be an untenable approach. Other alternatives may be feasible and could be developed as the program evolves; however, for timely and effective implementation of this program, some level of regulatory discards will have to be tolerated. The Committee recommends an amendment which allows for frameworking of DFS in order to provide the flexibility to make timely adjustments to those DFS in order to minimize regulatory discards.

PSC category implications

Requiring full retention will cause target fishery designations to change, relative to what they would be without full retention - therefore, the PSC fishery category to which bycatch amounts are assigned will also change. This will likely be a significant issue facing the Council and industry once the IR/IU program is implemented. While frameworking allows the PSC allocations to each fishery to be adjusted annually, in-season flexibility could be enhanced in order to respond to unanticipated impacts to PSC accounting. The Committee recognizes that PSC implications will have to be taken into account by the industry and Council during the annual spec setting process.

VIP rates (*)

Two primary issues were identified relative to the VIP program: (1) First and foremost, we need to look at retention based VIP standards. Bycatch rates should be based on retained product. (2) current VIP structure inhibits people going to a larger mesh size - the VIP as currently configured creates disincentive to using larger mesh . The IR/IU Committee discussed the possibility of increasing the VIP rate standards (by 50% for example) in order to provide the necessary cushion for vessels to use larger mesh without 'penalizing' themselves. An increase in the acceptable rate of this magnitude would not adversely impact prosecution of egregious violators. A higher rate standard could be applied only to those vessels which employ the larger mesh sizes. In order to determine the appropriate rate for those vessels, a short-term test fishery could be used, or, the VIP program could be 'suspended' for a short period of time to allow for identification of an appropriate standard. Further work by this or some smaller committee will be necessary to work with the agency and Council to resolve both the immediate VIP issues and the long-term, more fundamental VIP concerns (long-term issues include consideration of 30% vessels which are now basically exempt from the VIP).

Overall PRR at 15% (*)

The committee's original recommendation of a 15% overall PRR to satisfy utilization was based on the deep skin fillet product - other product forms might warrant a higher minimum PRR. Though this was raised as an issue at the meeting, the concensus of the Committee at this time is to stick with the 15% PRR for implementation of the program, even though this may allow for some leakage (i.e., continued economic discards could occur while staying within the 15% PRR, though this would be in violation of the regulations which will prohibit discards of the subject species).

Regulation of onshore processors (*)

Additional discussions took place relative to this issue - because federal regulations cannot extend to onshore processors (NOAA GC opinion) there needs to be some mechansim to insure that the provisions of the IR/IU program are applied equitably, to both at-sea and onshore processors. Although many Committee members question the legal interpretations regarding NMFS authority to regulate onshore, there was general acceptance that regulations pursuant to the utilization requirements would have to implemented by the State of Alaska. State of Alaska representatives advised the committee that such regulations could be promulgated at the State level, either through the Board of Fish or the Legislature, depending on the utilization option chosen by the Council.

While SOC approval of the program cannot be directly contingent upon enactment of State regulations, it is understood by the Committee that a parallel implementation course is possible, and should serve to alleviate any concerns over this issue.

IR/IU versus upgrade restrictions/load line requirements (*)

Both the moratorium and the pending license limitation program contain restrictions on increasing vessel size which may inhibit the ability to comply with provisions of the IR/IU program. The degree to which this is the case will depend on the utilization option chosen. Some vessels which wish to add processing capacity to comply may not be load line certified. The Committee recognizes the potential dilemma which some vessels may face, but has no further recommendation. A request to the analysts was made to provide information on how many H&G vessels, of all gear types, might be potentially affected.

Phase-in for flatfish fisheries (*)

For reasons detailed in the Committee's previous minutes, a phase-in (or delayed implementation) may be desirable for some fisheries, particularly the flatfish fisheries. These fisheries are prosecuted largely by small H&G processing vessels which have both physical and market impediments to immediately moving into a full retention mode for the flatfish species. Although a phase-in implementation (graduated percentages over two to five years) has desirable aspects, the Committee was informed by Enforcement representatives and legal counsel that such a phase-in would be impossible to monitor and enforce and is an untenable alternative. The other alternative, which is supported by the Committee, is to simply delay implementation for the flatfish fisheries for some period of time (they would still be required to retain all pollock and P. cod).

The Committee recognizes the EA/RIR analysis which indicates that more than two years may be necessary to develop markets and otherwise prepare for eventual implementation for the flatfish fisheries. The Committee supports a five year delay, with an explicit deadline to put industry on notice that implementation would occur at that time. Such a delay would be five years from implementation of the base program for pollock and cod, and could be incorporated into the groundfish FMP(s).

It is also pointed out that the delay for flatfish has meal implications; i.e., the existing H&G fleet would likely go under and be replaced by large meal plant vessels/shore plants if they are required to retain, and mealing is allowed (as opposed to food grade requirements). The Committee feels that representatives from this H&G fleet should come to the Council meeting with their own justification as to why five years is a necessary amount of time for a delay. It is assumed that the IR/IU committee will continue to function and will continue to examine this issue and how the implementation of pollock and cod is progressing. The Committee also feels that the recommended 'weigh-points' associated with a graduated phase-in should be set as targets by these operations, and monitored by the Committee and the Council, even if that is not the official, regulatory regime (i.e., they should attempt to approach full retention, even during the delayed implementation period).

Potential Exemptions (*)

Aside from the delayed implementation for flatfish as a species, the Committee recommends that there be no exemptions from the provisions of this program.

Committee Final Thoughts

With one exception, the Committee unanimously supports Council action ~~to approve and implement~~ some form of the IR/IU program. The Committee continues to support Retention Option 1 - retention of pollock and P. cod whenever and wherever they occur. The Committee also now recommends Utilization Option 1 - this is the least restrictive option and allows for processing into any product form, subject to the overriding 15% minimum PRR. The Committee makes this recommendation for three primary reasons: (1) to facilitate monitoring and enforcement, (2) the overwhelming desire to move forward expeditiously with an IR/IU program, and (3) to do so in a way which provides flexibility to the industry to respond to this program in an economically efficient manner.

The Committee also recognizes (1) the need for concurrent implementation with the Gulf of Alaska, in order to mitigate potential adverse impacts to the GOA fisheries, (2) the need to reconcile the accounting of mealed fish as discards, and (3) the need to examine the proposal for limited processing allowances for catcher vessels. These minutes and recommendations reflect the consensus of the Committee, though individual members may hold different views on two elements of the program - (1) the 15% PRR minimum, and (2) the length of the delay for the flatfish fisheries.

Finally, an overriding theme from the Committee to the Council is that we do not expect to implement an optimal IR/IU program on the first try, and this thought needs to apply to a variety of alternatives being considered. However, the Committee believes it is essential to move forward at this time, and then take the necessary downstream steps to optimize the program.

EXECUTIVE SUMMARY

of the

ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/
INITIAL REGULATORY FLEXIBILITY ANALYSIS
FOR
AMENDMENT OF THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH
FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA
TO IMPLEMENT AN
IMPROVED RETENTION - IMPROVED UTILIZATION
GROUNDFISH MANAGEMENT PROGRAM

Prepared by

National Marine Fisheries Service
Alaska Fisheries Science Center
Alaska Region

September 16, 1996

1.0 Improved Retention/Improved Utilization

The Council has proposed that BSAI commercial groundfish fisheries be required to reduce discards. The objective of the Council in proposing an "Improved Retention/Improved Utilization" (IR/IU) FMP amendment centers on the concern that groundfish catches are presently "underutilized", resulting in discard levels which are perceived to be unacceptably high. An IR/IU amendment would be expected to, *"... provide an incentive for fishermen to avoid unwanted catch, increase utilization of fish that are taken, and, thus, reduce discards of whole fish."*

1.1 The Species-Based IR Option

The IR/IU proposal, amended at the April 1996 Council meeting, contains two "Retention Alternatives," i.e., the requisite "status quo" alternative and a "species-based" approach. It also contains three "Utilization Options" (in addition to the no-action "status quo" alternative), each dictating, to a greater or lesser degree, the form and extent of processing which must be applied to the retained catch.

The proposal extends IR/IU to all gear-types, and requires 100% retention of four groundfish species; i.e., *Alaska pollock, rock sole, Pacific cod, and yellowfin sole.* In the case of these flatfish species, the proposal also contains two suboptions, i.e., either, 1) incrementally "phasing-in" 100% retention over a fixed period of time [either 2- or 5-years], or 2) "delaying" implementation of the 100% retention requirement until a date-certain in the future. In either case, however, 100% retention of pollock and P.cod would be mandated for all operations beginning as soon as possible (presumably, January 1, 1998).

1.2 Improved Utilization Requirement

The Council's IR/IU proposal contains a total of three Utilization Options (plus the status quo alternative). Options 2 and 3 each contain three suboptions. The family of options and suboptions is intended to define the uses which may be made of "retained" catches of the four species of concern, under IR/IU. As such, they pertain only to the use of these four groundfish species, allowing all other groundfish species to be used (or discarded) at the discretion of the operator.[1]

Under the current Magnuson Act, the Secretary does not have authority to directly regulate on-shore processing, including requiring the processing of fish into certain product forms.[2] (Nevertheless, the Council has requested an analysis of extending IR/IU regulations to this sector.) This becomes particularly significant as it pertains to the relationship between the processing plant and the delivering vessel. It is, for example, necessary that an IR/IU program *require* a processor to accept all pollock, P.cod, yellowfin, and/or rock sole offered for delivery by vessels operating in IR/IU regulated BSAI fisheries. If such a requirement does not exist, rejection of deliveries would constitute effective discarding of IR/IU regulated species by the processor.

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[1] Subject, of course, to other prevailing laws and regulations.

[2] See discussion in section 8.0 Legal Authority in the EA/RIR/IRFA.

1.2.1 Utilization Option 1

Utilization Option 1 can be characterized as potentially the *least restrictive* of the three options under consideration. It provide that the retained catch of the four groundfish species of concern may be processed into any form, regardless of whether or not the resulting product is suitable for direct "human consumption".[3]

1.2.2 Utilization Option 2

Utilization Option 2 is potentially the *most restrictive* of three options. It requires that all retained *pollock, P.cod, yellowfin sole, and rock sole* be processed into a product form for... "direct human consumption", based upon a percentage of total round weight of harvest of each respective species of concern. The three suboptions under Option 2 specify the *minimum* percentage of the retained catch of the species of concern which **must** be processed into a product form for direct human consumption. The respective suboption thresholds are: Suboption A - 50%; Suboption B- 70%; and Suboption C - 90%.

1.2.3 Utilization Option 3

Utilization Option 3 provides that "reduction" of *pollock, P.cod, yellowfin sole, and rock sole* to meal be limited to a *maximum* percentage of the retained catch of that species. The three suboptions establish these maximum meal rates as follows: Suboption A - 50%; Suboption B - 30%; Suboption C - 10%.

2.0 Environmental Impacts of IR/IU

Possible ecological impacts of IR/IU relative to the status quo would primarily occur through the decrease in the amounts of Alaska (walleye) pollock, Pacific cod, yellowfin sole and rock sole that are returned to the sea. Stock assessments of pollock, cod, yellowfin sole and rock sole already assume 100% mortality of the discards of these species, so no change in the population status of these species is anticipated due to any of the proposed options.[4] However, the decrease in discards returned to the sea could result in a decrease in the amount of food available to scavengers and produce a decline in growth or reproductive output of species that rely on discards for a major portion of their food intake. Also, changes in energy flow to the detritus and local enrichment through an increase in processing waste (offal) could occur.

Groundfish species likely to benefit from offal production and presumably also from whole discards include: Pacific cod, Alaska pollock, arrowtooth flounder, flathead sole, yellowfin sole, Pacific halibut and skates. Other upper-trophic level scavenger species that consume offal and discards include sculpins, crabs, other predatory invertebrates, marine mammals (particularly pinnipeds), and marine birds such as gulls, kittiwakes, and fulmars. The amount of offal and discards under the status quo option is an order of magnitude less than the total consumptive capacity of scavenging birds, groundfish, and crab in the eastern Bering Sea. This is an indication that the current levels of offal and discards are not a significant source of energy for these populations. The range of possible decline in the amount of dead organic matter returned to the sea under IR Option 1, given a range of product recovery rates of 15% to 100%, is 2% to 11%, respectively. It is likely that adoption of IR Option 1 would not cause a large decline in the amount of dead organic matter returned to the sea and would have **no significant positive or negative impacts** on scavenger species. Analysis also suggests that offal and discards as a percent of total detrital flow under all the alternatives is 1% or less, evidence of **no significant impact** on

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[3] At present, only "meal", "bait" and "offal" are regarded as outputs "not-for-human-consumption," with offal not qualifying as a "product" form, but rather as "processing waste."

[4] Except perhaps insofar as IR/IU induces significant changes in fishing technology or practices resulting in successful avoidance of unwanted bycatch. At present, no empirical data are available with which to assess this potentiality.

detrital flow. Finally, the small estimated change in total offal production relative to current shoreside offal production in the eastern Bering Sea under the proposed IR/IU options are an indication of **no significant impact** due to a change in local enrichment.

3.0 Improved Retention: Alternative One and its Suboptions

Catch and discard data from NMFS Alaska Region Blend Estimates, and NMFS Weekly Production Reports, have been employed in evaluating IR Option 1, with suboptions A & B, and contrasting each with the status quo alternative. The fishing years 1994 and 1995 were selected with the expectation that they most nearly reflect the current pattern of catch, utilization, and discards in the fisheries under consideration.

3.1 IR Option 1

The analysis of Retention Option 1 retains the effort-apportioning criteria employed in the standard Alaska Region target definitions and contained in the NMFS Blend files. Adoption of the "species-based" retention option would have a broad potential impact on the groundfish fisheries of the BSAI. This is so because, IR Option 1 requires that, for **any** groundfish fishery operating in the BSAI management area, 100% of the *pollock, P. cod, yellowfin sole,* and *rock sole* contained in the catch be retained. Any other groundfish species present in the catch could be retained or discarded at the discretion of the operator.[5] [6]

The potentially affected vessels, by size, operating mode, and fishery are identified in the following tables. The indicated "Significant Impact" of IR Option 1 reflects the *fleet-wide* response (i.e., assumes all vessels operate at the mean).[7]

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[5] Subject, of course, to compliance with any other prevailing regulation or statute, e.g., EPA discharge requirements, NMFS Directed Fishing Standards.

[6] To the extent that harvesters are able to avoid bycatches of unwanted fish, these discard estimates may be further reduced by imposition of a "retention" requirement. Presumably, adjustments to a "retention" requirement would occur over time as fishermen learn new techniques, or adjust fishing practices, patterns, and areas. It may require the observation of these operations over several seasons under a "retention" requirement before such information could be obtained, however.

[7] There will be individual differences in the relative "compliance-burden" among vessels within any given target fishery. For example, in a fishery in which the "fleet-as-a-whole" **will** (likely) experience significant compliance impacts attributable to IR/IU, one or more *individual* vessels may not. Alternatively, in a fishery that, on-average, is **not** expected to incur significant impacts, there may be individual vessels which will find compliance difficult. These preliminary findings do not reflect these potential differences *within* a fleet.

Trawl Vessel Count by Target, Vessel Length, and Processor Class

(Target is based on retained catch by processor, week, area, gear.)

	Motherships	Catcher/Processors		Catcher boats				Significant Impact of Compliance (Y/N)
	Greater than 124	Greater than 124	60 to 124 feet	Greater than 124	60 to 124 feet	Less than 60	Unknown length	
1994								
Pollock	3	41	-	6	31	-	2	N
bottom	3	36	-	26	79	-	12	N
pelagic	-	6	1	-	1	-	-	N
Sablefish	4	33	7	11	57	3	5	Y1/
Pacific cod	3	27	3	-	1	-	1	Y
Rock sole	-	8	3	1	6	-	-	N
Turbot	2	32	3	4	12	-	4	Y
yellowfin	-	13	4	-	2	-	-	Y
Flat, other	-	13	-	-	-	-	-	N
Rockfish	-	14	1	-	-	-	-	N
Atka mack								
1995								
Pollock	4	39	1	3	22	-	1	N
bottom	4	38	1	24	102	5	11	N
pelagic	-	1	1	-	2	-	-	N
Sablefish	4	33	7	16	74	-	3	Y1/
Pacific cod	-	17	2	-	-	-	-	Y
Flathead	2	28	8	1	3	-	-	Y
Rock sole	2	16	5	4	10	-	-	N
Turbot	4	38	6	4	30	-	-	Y
Yellowfin	1	16	6	1	2	-	-	Y
Flat, other	-	14	-	-	-	-	-	N
Rockfish	-	17	-	-	-	-	-	N
Atka mack								

1/ Catcher/processor vessels in this fishery with the capability to "fillet" product will face **"no significant burden"** in complying with the IR provisions (according to the Council's IR/IU Industry Working Group). Vessels limited to "H&G" operation may be **"significantly disadvantaged"** by the retention requirement.

Non-trawl Vessel Count by Target, Vessel Length, and Processor Class

(Target is based on retained catch by processor, week, area, gear.)1/

	Catcher/Processors			Catcher boats				Significant Impact of Compliance (Y/N)
	Greater than 124	60 to 124 feet	Less than 60	Greater than 124	60 to 124 feet	Less than 60	Unknown length	
1994								
Sablefish								
Longline	4	13	-	-	1	7	1	N
Pot	-	1	-	-	-	-	-	N
Pacific cod								
Jig	-	-	-	-	1	35	3	N
Longline	28	19	1	-	1	6	1	N
Pot	3	2	-	5	21	6	2	N
Turbot								
Longline	5	5	-	-	1	-	1	N
1995								
Sablefish								
Longline	4	9	-	-	11	7	5	N
Pacific cod								
Jig	1	2	1	-	2	38	3	N
Longline	28	14	2	-	3	11	2	N
Pot	5	5	1	17	80	11	2	N
Turbot								
Longline	16	7	-	-	1	1	1	N

Source: NMFS Alaska region blend, ADFG fishtickets, and NORPAC. All targets calculated by AFSC staff.

1/ Note, one mothership was reported to have participated in the 1994 P.cod pot fishery and was greater than 124' in length. No other motherships participated in any non-trawl BSAI groundfish fishery during 1994 or 1995, according to "blend," NORPAC, or ADF&G fishticket records.

3.1.1 The Potential Aggregate Effect on Discards

Taken as a whole, the target fisheries identified above accounted for an estimated total groundfish catch in 1994 of approximately 1.99 million metric tons (mmt). In 1995, that total was estimated to be 1.92 mmt. These fisheries collectively discarded an estimated 282,574 mt of groundfish (or approximately 14.5% of total catch) in 1994, and 272,995 mt (or about 14% of total catch) in 1995. Had IR Option 1 been in effect in these fisheries in these years, aggregate discards could have *potentially* been reduced by approximately 74% (assuming discards of IR regulated species were not substantially offset by discards of previously retained, but IR unregulated species).[8] This upper-bound estimate of bycatch savings would have represented about 11% of the total BSAI groundfish TAC in these two years.

Most of the discards of *target* species are composed of fish which are, by current standards, "unmarketable" (except perhaps as meal). A share of the remaining discards are presumed to be damaged, or otherwise unsuitable for retention and processing. As a result, it seems likely that the amount of additional *product* deriving from IR induced reductions in discards under Option 1 will be substantially smaller than the additional *retained* catch tonnage of the target species might suggest.

3.2 Suboption A - "Phase-in"

From early in the IR/IU development process, the concept of a "phase-in" of the retention requirement has been under consideration. The preliminary findings of the Implementation Issues Assessment, prepared for the Council in March 1995, suggested that, "***... monitoring and enforcing anything short of a 100% retention requirement, for any given species, is impracticable.***"

Nonetheless, at its April 1996 meeting, the Council reaffirmed its desire to examine a modified "phase-in" program for improved retention in the BSAI groundfish fisheries. Under this proposal, 100% retention of pollock and cod would be *required* in all BSAI groundfish fisheries beginning immediately upon implementation of the IR/IU program (e.g., January 1, 1998). Retention of rock sole and yellowfin sole would be "phased-in," starting at 60% retention in the first year, and increasing in fixed increments until 100% retention was achieved.

The rationale for this approach centers on concerns about the market limitations which currently exist for small (and/or male) rock sole and yellowfin sole and the burden their required retention could impose. To accommodate these concerns the Council has proposed two alternative "phase-in" rates for rock sole and yellowfin sole under the IR proposal.

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[8] This estimate probably "overstates" the potential savings because some of these groundfish discards were actually attributable to "Regulatory" requirements. While likely varying by gear-type, species, and area, preliminary estimates suggest that likely no more than 30% of total groundfish discards can be regarded as "Regulatory," i.e., at least 70% were "Economic."

A Rock sole and Yellowfin "Phase-in" Schedule [9]
(assumes 1995 catch levels)

Year	Species	Percent Required	Retention Required (mt)	Net Change from Status Quo (mt)	(percent)
1	RS	60%	32,700	11,100	20%
	YS	60%	70,800	(19,200)	none
2	RS	70%	38,220	16,620	30%
	YS	70%	82,600	(7,400)	none
3	RS	80%	43,700	22,100	40%
	YS	80%	94,400	4,400	5%
4	RS	90%	49,100	27,540	50%
	YS	90%	106,200	16,200	18%
5	RS	100%	54,600	33,000	60%
	YS	100%	118,000	28,000	31%

The retention requirements will apply across all BSAI groundfish fisheries in which any of the four species of concern are present in the catch. The implications for total bycatch savings in response to a variable "phase-in" schedule can be examined on the basis of aggregate retention/discard performance under the successive annual retention rates. The results of that assessment appear in the table above and are described in the text that follow.[10]

3.2.1 A Two-year "phase-in"

Using the 1995 catch and discard blend data, as an example, the following conclusions can be drawn about the aggregate effects of the two "phase-in" schedules. In 1995, total discards of all groundfish species in potentially IR regulated target fisheries were approximately 273,000 mt. Pollock and P.cod accounted for approximately 52% of all discards of allocated groundfish species in these fisheries. Rock sole discards accounted for an estimated 12%, or 33,000 mt, while yellowfin sole made up slightly more than 10%, or 28,000 mt, of total groundfish discards.

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[9] This implicitly assumes that all vessels operate at the "mean," e.g., they all have identical catch composition and retention rates. To the extent that this is not so, the required increase in retention is *understated.*

[10] A *fishery-by-fishery* examination of the "phase-in" schedule appears in Appendix C of the EA/RIR/IRFA. The interested reader should refer to that section of the Final document.

Had the proposed IR/IU program been in place in that year, and assuming 100% retention of all pollock, P.cod, yellowfin, and rock sole, total groundfish discards in the BSAI groundfish fisheries could have potentially been reduced by approximately 74%, as compared to the status quo.[11]

If a two-year "phase-in" schedule on retention of rock sole and yellowfin sole had, instead, been in place, assuming approximately constant catch totals and species composition, 60% of the catch of rock sole and 60% of the catch of yellowfin sole would have been required to be retained in the first year; 80% of the catch of each in the second year; 100% in the third year. Based upon total catch estimates for each of these species, this schedule would have required retention of 32,700 mt of the 54,600 mt rock sole total catch, and 70,800 mt of the 118,000 mt yellowfin total catch in the first year. In the second year, 43,700 mt of the 54,600 mt rock sole catch, and 94,400 mt of the 118,000 mt yellowfin total catch would have been required to be retained. In the third year, all 54,600 mt of rock sole and 118,000 mt of yellowfin would have been required to be retained.

Over all, in 1995, approximately 40% of the total rock sole catch in all BSAI groundfish fisheries was "retained" (approximately 21,600 mt of the 54,600 mt total). Thus, the proposed two year "phase-in" would require an additional 20% retention of rock sole catch in the first year and an additional 40% in the second year, *ceteris paribus*.

For yellowfin sole, approximately 76% of total catch was "retained" in 1995 (90,000 mt of a 118,000 mt total catch). Therefore, assuming these catch levels prevail, the two year "phase-in" schedule would require no increase in retention of this species in the first year and only an additional 5% retention in the second, *ceteris paribus*.

3.2.2 A Five-year "phase-in"

Using, again, the 1995 catch and discard data for purposes of a numerical example and referring to the table above, the aggregate effect of the five year "phase-in" schedule can be interpreted as follows. As in the two year schedule, the first year of the five year plan would require an additional 20% retention of rock sole catch over that observed under the status quo (or 32,700 mt of the 54,600 mt total catch). When the retention performance of the fishery is taken as a whole, it would require no additional retention of yellowfin sole. In the second year, 38,220 mt of rock sole would be required to be retained. Again, yellowfin retention would be unaffected, in the aggregate. In the third year, rock sole retention would be required to increase by an additional 22,100 mt (to 49,100 mt), or a 40% increase in retention from the status quo. Yellowfin retention would be required to increase by approximately 4,400 mt (or 5% over the status quo). Year four would mandate rock sole retention totaling 49,100 mt (up 27,540 mt from the status quo), while yellowfin retention would be required to increase to 106,200 mt (16,200 mt above the status quo level). In year five, 100% retention is required. This suggests, in this example, that rock sole retention would rise by 33,000 mt (up by 60% over the status quo). Yellowfin retention would have been required to reach 118,000 mt, a net increase of 28,000 mt from the status quo.

Again, these represent "aggregate" performance figures, i.e, summed across all potentially affected BSAI groundfish fisheries. The potential impacts of a "phase-in" schedule for rock sole and yellowfin on any individual sector would be expected to vary across "target" fisheries, generally in direct proportion to the relative quantities of these two species in the catch, and inversely with the size and capacity of the operations affected. That is, many fisheries will not incur significant direct costs in complying with this rule (e.g., they catch relatively few rock sole or yellowfin sole and/or they have the production capacity to deal with the increase). Others, especially those with the highest rates of rock sole and yellowfin sole catches will likely be adversely impacted. However, even within this latter group, the impacts will likely be greatest for the smaller, less mobile, and least

[11] See footnote number 8.

operationally diversified vessels, and least burdensome for the larger, more mobile, and most operationally diversified operations. (See Appendix C.)

It appears that monitoring and enforcement of either "phase-in" program will *exceed* the capabilities of the available NMFS and Coast Guard resources. Given current levels of observer and enforcement coverage, the complexity of the observer's present task load, as well as the nature of monitoring "*discard rates*," and on the advice of NMFS Observer and Enforcement Offices, and representatives of the U.S. Coast Guard, it appears that enforcement of an IR/IU "phase-in" program would be *impracticable*.

Industry members have argued, nonetheless, that simply having these "phase-in" targets on the books will facilitate successful transition to a 100% retention requirement. They propose that, by explicitly specifying incrementally increasing retention targets, the industry will be able to better maintain its attention and focus on the inevitable requirement of 100% retention of all yellowfin and rock sole. Furthermore, they argue, by having the retention schedule as leverage, they may be more successful it opening or expanding markets for these fish. They identify both these aspects of a phase-in schedule for flatfish under IR/IU as clear "benefits."

3.3 Suboption B - "Delayed Implementation"

As an alternative to a "phase-in" program for retention of yellowfin and rock sole, it was suggested that implementation of the 100% retention requirement be *postponed* for a given period. For purposes of the analysis, the Council suggested that the "delay" extend for two or five years.

A quantitative analysis of the impacts of delaying IR/IU implementation for rock sole and yellowfin is necessarily limited by the data and "response" information available. As with the "phase-in" assessment, one may project the probable "discard savings" that, in theory, accrue from such a proposal. In this case, if the IR/IU requirement was delayed for two years, rock sole discards could potentially continue at "status quo" levels for two successive seasons after implementation of the 100% retention requirement was adopted for pollock and P.cod. If all else is assumed constant, this means that approximately 66,000 mt of rock sole (33,000 mt each year) could be legally discarded during the "delay." Similarly, 56,000 mt of yellowfin (approximately 28,000 mt per year) could legally be discarded during the implementation "delay."

If the postponement extended to five years, i.e., with 100% retention beginning in the fifth year, the reduction in "savings" over the immediate 100% retention requirement could be 132,000 mt (or 33,000 mt each year) for rock sole, 112,000 mt (i.e., 28,000 mt) for yellowfin sole.

These are very crude estimates which do not account for possible adjustments by the industry to the eventual 100% retention requirement.[12] However, testimony by industry sources before the Council at its April meeting suggested that if implementation of the retention requirement were simply delayed for some period, industry would not have the impetus necessary to carry out the market development, structural changes, and operational adjustments required to comply with IR/IU when adopted. That is, they reported that, "unless the Council keeps the industry's feet to the fire . . ." (presumably with a phase-in schedule) the industry will be as unprepared to comply with a 100% retention requirement following the implementation "delay" as it would be if 100% retention for rock sole and yellowfin were effective simultaneously with pollock and P.cod.

On the other hand, a "delay" in implementation, rather than a "phase-in," would accommodate the monitoring and enforcement concerns expressed by the agency and the Coast Guard, and avoid placing the Council (and Secretary) in the position of adopting regulations, i.e., a phase-in for flatfish, which they have acknowledged probably cannot be monitored or enforced.

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[12] See footnote 8.

4.0 Target Switching Impacts of IR/IU

One significant, but perhaps unanticipated, impact of IR/IU concerns "target switching." BSAI groundfish fisheries are largely managed, monitored, and defined on the basis of *retained catch* composition (the only exception, at present, being pelagic pollock). Therefore, anything which changes the retained catch composition of an operation could shift it (and its performance indicators) into or out of a given "target" fishery category. Thus, the requirement that any operator catching any amount of pollock, P.cod, yellowfin, and/or rock sole must retain 100% of that catch, means that the species composition upon which the fishery "target" is assigned could be altered.

On the basis of 1994 and 1995 catch data, and assuming 100% retention of each of the four species of concern, the following patterns of "target switching" would have been predicted as a result of mandatory changes in "retained" catch composition.[13]

[13] Additional and alternative characterizations of the affect of "target switching" are contained in Appendix D.

Target Switching

Number of Processors by BSAI Regional Office and AFSC IR/IU
Targets, Processing Mode and Target, 1994

	w/o IR	w/IR	Duplicate	Exited	Entered
Motherships					
Bottom pollock	9	6	5	4	1
Pacific cod	6	5	5	1	0
Pelagic pollock	15	15	15	0	0
Rock sole	3	4	3	0	1
Yellowfin sole	3	3	3	0	0
Catcher/Processors					
Atka mackerel	16	15	15	1	0
Bottom pollock	42	54	35	7	19
Pacific cod	90	86	80	10	6
O. flats	21	13	10	11	3
Rockfish	14	14	14	0	0
Pelagic pollock	36	39	36	0	3
Rock sole	32	30	28	4	2
Sablefish	24	24	24	0	0
Greenland turbot	21	21	21	0	0
Yellowfin sole	35	35	35	0	0
Discards	6	0	0	6	0
Shore plants					
Bottom pollock	2	6	1	1	5
Pacific cod	16	17	16	0	1
Rockfish	2	2	2	0	0
Pelagic pollock	9	9	9	0	0
Sablefish	6	6	6	0	0
Greenland turbot	5	5	5	0	0
Yellowfin sole	4	4	4	0	0

Target Switching

Number of Processors by BSAI Regional Office and AFSC IR/IU
Targets, Processing Mode and Target, 1995

	w/o IR	w/IR	Duplicate	Exited	Entered
Motherships					
Bottom pollock	16	13	11	5	2
Pacific cod	15	15	15	0	0
O. flats	1	1	1	0	0
Pelagic pollock	26	26	26	0	0
Rock sole	3	3	2	1	1
Greenland turbot	3	3	3	0	0
Yellowfin sole	7	7	7	0	0
Discards	2	0	0	2	0
Catcher/Processors					
Atka mackerel	17	17	17	0	0
Bottom pollock	39	53	34	5	19
Pacific cod	92	90	88	4	2
O. flats	21	19	16	5	3
Rockfish	16	16	16	0	0
Flathead sole	20	0	0	20	0
Other	1	0	0	1	0
Pelagic pollock	39	39	39	0	0
Rock sole	36	36	35	1	1
Sablefish	15	15	15	0	0
Greenland turbot	44	42	42	2	0
Arrowtooth	3	2	2	1	0
Yellowfin sole	44	44	44	0	0
Discards	7	0	0	7	0
Shore plants					
Bottom pollock	5	6	4	1	2
Pacific cod	16	16	16	0	0
Rockfish	1	0	0	1	0
Other	1	1	1	0	0
Pelagic pollock	8	8	8	0	0
Rock sole	0	1	0	0	1
Sablefish	14	14	14	0	0
Greenland turbot	6	6	6	0	0
Yellowfin sole	2	2	2	0	0

5.0 Alternative means of IR Compliance Monitoring

The level of compliance with any retention regulation may be expected to vary directly with the level of observer coverage. Significant portions of the industry are, at present, either unobserved or have an observer onboard only 30% of the time. Even operations classified as having "*100% observer coverage*" do not, in fact, have all hauls (lifts) or deliveries monitored. Further, because discards can take place at various sites on a vessel (or at a plant) and at various times, it is not reasonable to expect an "*on-duty*" observer to monitor all discards.

In the face of reduced staff and increasing workloads, the NMFS observer program is having difficulty carrying out current scientific and monitoring responsibilities. However, no additional resources are expected in the near future. Therefore, active NMFS-observer monitoring of the Council's IR Option **cannot** be accomplished without additional observers and support personnel, or a significant reallocation of existing resources and priorities (although re-prioritization could undermine the observer program's ability to provide "primary" information for science and management).

Without adequate observer monitoring of discards, NMFS expects to be unable to assure strict "real-time" (field-based) compliance with the increased retention regulations, as proposed.

5.1 Monitoring Alternative 1:

Depending upon the level of monitoring which is defined as "*adequate*," the proposed IR management action could necessitate greater direct observation of fishery participants. At one extreme, the proposed IR program could require multiple observers on *all vessels (and at all plants), at all times*, whenever participating in any IR regulated BSAI groundfish fishery. This would include coverage onboard those vessels which are currently unobserved. Even without a quantitative estimate, it is apparent that this level of monitoring, while perhaps technically feasible, would be **prohibitively costly and unnecessarily burdensome**, as compared to the probable benefits, as measured in discard savings through retention compliance.[14] This conclusion was independently confirmed by the Council's IR/IU Working Group (per. comm., IR/IU Industry Working Group, March 26, 1996).

5.2 Monitoring Alternative 2:

A relatively more modest approach to real-time, on-site monitoring of the retention requirement (proposed by the Council's IR/IU Industry Working Group) would be to effectively *"double"* observer coverage onboard vessels which currently carry observers, and at plants which are now required to have NMFS-observer coverage. That is, for example, all vessels (and presumably plants) which are currently required to have "100% observer coverage" would, under this proposal, be required to have two NMFS-certified observers present when participating in any IR regulated fishery. Likewise, any vessel (or plant) which is currently required to have an observer present 30% of the time would, under this proposal, have to have NMFS-observer coverage during 60% of its operating period, while participating in any IR regulated fishery.

These levels will **not** assure compliance with the proposed 100% retention requirement, since not all hauls, lifts, (deliveries) or hooks can be monitored for observed operations, even at this level of coverage. (Furthermore, all operations which are currently "unobserved" would remain so under this proposal.) However, the increased

[14] The direct and indirect costs of adopting Monitoring Alternative 1 would far exceed those estimated for Monitoring Alternative 2.

presence of monitors can reasonably be expected to *improve* the rate of compliance by increasing the risk of detection of violations.

The NMFS Observer program estimates that adoption of IR Monitoring Alternative 2 would significantly increase the cost of providing observer services for both the fishing industry and NMFS. Specifically, it is estimated that the number of "deployment days" will nearly double, from 21,861 to 42,442 days per year.[15] If a "cost per deployment day" of $201 is used, adoption of Monitoring Alternative 2 would increase annual industry costs for observer coverage in the BSAI groundfish fisheries from $4.4 million to $8.5 million.[16]

The additional observer coverage in the BSAI groundfish fisheries, outlined above, is estimated to increase the number of deployed observers by about 40% (e.g., from 567 in 1995 to 794). This increase in the number of observers and it's associated increase in the amount of data collected is estimated to raise overall NMFS Observer Program annual costs by about 33%, from $1.8 million to $2.4 million. This budgetary increase can be attributed to additional staffing and augmented spending for observer sampling equipment and data entry contracts.

Thus, initial estimates of the aggregate cost per year attributable to adoption of IR Monitoring Alternative 2, as compared to retention of the Status Quo, place the figure at approximately $10.9 million ***(or an increase of at least $4.7 million per year above the status quo cost).***

5.3 Monitoring Alternative 3:

Near the other end of the spectrum of possible monitoring programs for the proposed IR management action would be one relying principally upon *existing* management, observer, and enforcement resources, and based upon utilization of "secondary" data sources to confirm retention compliance. Under this approach, *retention* compliance would be evaluated primarily in two ways.

The first involves the procedures for verifying IR compliance during random at-sea boardings, currently conducted by the Coast Guard and NMFS Enforcement Officers. In the case of an enforcement boarding, catch round weights reported in the vessel's fishing log would be compared to the round weight equivalent catch estimates obtained by "back casting" from primary product weights, using standard product recovery rates (PRRs), published by NMFS. If the two sources of catch estimates, for each species of concern, are within acceptable limits (to be specified by NMFS in the enabling regulations), compliance with *retention* requirements would be confirmed.[17] [18]

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[15] Figures are based on an average of 1994 and 1995 data. In addition, since vessels operating under a CDQ quota currently carry two observers, it was assumed that increased coverage would not be required for these operations.

[16] The $201 estimate was derived from 1995 observer cost data which were compiled for Research Plan fee collection purposes and was used in the April 4, 1996 "EA/RIR for Implementation of a North Pacific Observer Program to Replace the North Pacific Fisheries Research Plan" (draft for Council review). It is considered the most current and accurate estimate of cost per deployment day for observer services.

[17] There may be some practical difficulties with relying on hold-counts at sea. Although a volumetric hold count may be sufficient for giving a general idea of the amount of product onboard a vessel, it is not exact. Bulkheads, conveyor belts, and other obstructions can undermine accuracy. If the logbook and volumetric hold count do not match, within acceptable limits, a case-by-case count must be conducted in order to substantiate a violation. For a variety of reasons, including safety considerations, a case-by-case count will likely not be conducted at sea.

The second means of monitoring retention compliance under this alternative could be to review catch and production reports, submitted by industry to the agency, along with the associated observer catch records. On the basis of these reports, NMFS could derive estimates of total catch, by species of concern, both from catch records and by use of standard PRRs applied to reported product. These estimates could then be compared to observer catch estimates for the same operation and period. If the two estimates agree, within some reasonable limit (to be specified in the enabling regulations), retention compliance would be assumed.

This monitoring system has several potential difficulties. First, it relies on combining catch estimate information from different sources (observer and processor) which will lead to conflicting conclusions in some cases. Another difficulty in this method is that observer estimates of total catch and species composition are made on a haul-by-haul basis. Production data are recorded daily and are not required to be tied to a specific haul, although record keeping and reporting requirements could be changed. Nonetheless, with *existing* observer coverage levels, it will be possible to apply this method ***only*** to the observed hauls and not to all catch of the vessel (or delivered to a plant).[19]

In practice, the *"risk"* of detection of even relatively significant violations of the retention requirement will depend, in large part, upon random boardings and audits of the data and, thus, will vary directly with the level of resources dedicated to these enforcement functions. Given existing resources, the probability of detection of even relatively significant violations of the "retention" requirement is likely small.

As noted, in the form adopted for analysis by the Council, this alternative would rely primarily upon *existing* observer, enforcement, and management staff and resources.[20] Under these Agency-resource assumptions, if approved and implemented, there would be ***no significant additional cost*** attributable to IR Compliance Monitoring Alternative 3.

6.0 Conflicts with Other Regulatory Requirements and IR/IU

IR/IU could be in conflict with a number of existing management practices, regulations, and Federal statutes. These conflicts present a range of challenges for the design and implementation of a "workable" retention/utilization program.

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[18] One of the most serious potential shortcomings of this approach is the reliance upon fixed PRRs. There is considerable evidence that PRRs can vary, not only between operations, but within any single operation, over the course of the season. This could result in issuance of a citation-of-violation and (potentially) an unjustified economic and/or legal penalty. NMFS PRRs were not originally intended for use in monitoring the production performance of individual operators. Thus, fundamental difficulties with the use of a standardized PRR may require that NMFS adopt a reasonably large degree of latitude when specifying IR compliance standards.

[19] Observers sample about 60 percent of hauls on observed trawl vessels.

[20] That is, no additional resources, e.g., FTE, dedicated to IR/IU can be anticipated. If, however, no additional resources are forthcoming in connection with adoption of IR/IU, diversion of staff and resources from other functions to monitor, investigate, and prosecute IR/IU cases will mean reduced efforts being applied to those other programs, i.e., the agency will be forced to re-prioritize the allocation of its "fixed" management, enforcement, and legal resources.

6.1 Directed Fishing Standards (maximum retainable bycatch amounts)

NMFS annually assesses each groundfish TAC to determine how much of a species' TAC is needed as bycatch in other groundfish fisheries. The remainder is made available as a directed fishing allowance. Directed fishing is defined in regulations as, *"any fishing activity that results in the retention of an amount of a species or species group onboard a vessel that is greater than the maximum retainable bycatch (MRB) amount for that species or species group."*

The MRB amount is calculated as a percentage of the species closed to directed fishing relative to the amount of other species retained onboard the vessels that are open for directed fishing. Current regulations prohibit the retention of a species closed to directed fishing in amounts that exceed the MRB percentage, and all excess catch **must** be discarded.

The MRB percentages established in regulations serve as a management tool to slow down the rate of harvest of a species placed on *"bycatch-only"* status and to reduce the incentive to fishing vessels to target on the species. Nonetheless, vessels may "top off" their retained catch of species open to directed fishing with a species on bycatch status, up to the MRB amount.

During the course of a fishing year, NMFS routinely closes "directed fishing" for specified groundfish species. Directed fishing closures occur because, 1) a fishery has reached a halibut, crab, salmon, or herring bycatch allowance, 2) the directed fishing allowance for a target groundfish species has been attained, or 3) because of overfishing concerns for another groundfish species taken as bycatch. If TAC is reached, however, the species becomes *"prohibited"*, and all catch of the species **must** be discarded.

6.1.1 Interactions of MRB percentages and IR/IU

The complexity associated with monitoring and enforcing compliance with the Council's IR/IU proposal is increased if mandatory retention of pollock, P.cod, rock sole, or yellowfin sole is **secondary** to NMFS regulations that require discard of the portion of the catch of these species that exceed MRB amounts (or prohibit their retention when on *"prohibited"* status).

Perhaps the only alternative to directed fishing closures that would still allow for full retention under the proposed IR/IU program would be a program that required full retention of designated species, without triggering a directed fishing closure, as TAC is approached. Such a program would, however, also require that once a species' TAC is reached, all gear/area fishing operations that would be expected to take any additional amounts of that species would be prohibited, i.e., complete fishery closures. This option could be expected to result in **significant** foregone harvesting opportunities, with substantial economic and socioeconomic consequences for affected sectors, dependent communities, and the Nation, as a whole, without commensurate off-setting benefits.

6.2 VIP Bycatch Rates

Under the IR/IU proposal, vessels would have greater incentive to undertake action to be more selective in what they catch. Avoidance of certain fishing grounds or fishing depths, and gear modifications are obvious means to increase selectivity of catch. Some gear modifications, such as increased codend mesh size, could increase bycatch *rates* of prohibited species such as halibut or crab. This could occur because small-sized fish escape through the trawl/codend mesh, thus reducing the absolute amount of groundfish harvested per unit of time; yet the bycatch amount of halibut or crab would remain relatively unchanged.

Concerns about increased bycatch *rates* of halibut and crab have been voiced by trawl industry members as the industry continues to pursue voluntary measures to reduce bycatch discard amounts via the use of large mesh codends in the pollock, P.cod, and rock sole fisheries. This concern is particularly relevant in view of VIP bycatch rate standards. Under the VIP, bycatch rate standards are based on the composition of catch, *not* on what is retained. Vessels that exceed these standards are subject to prosecution.

Because *total catch*, **not** *retained catch*, is considered the basis for the bycatch rate, the denominator of the VIP compliance calculation is the weight of all groundfish in the sample. Vessels that undertake action to be more *"selective,"* in terms of their groundfish catch composition, e.g., under the IR/IU program, could increase their vulnerability to higher bycatch rates of halibut and crab, and thus of prosecution under the VIP.

The most obvious response to this concern would be to increase bycatch rate standards to provide trawl vessel operators greater latitude to explore gear modifications to increase species or size selectivity. This could undermine the objectives of VIP. Alternatively, some have suggested specifying increased VIP bycatch rate standards in terms of *retained* catch. The option of redesigning the VIP using bycatch rate standards based on retained catch rather than total catch poses **prohibitive difficulties**, unless all groundfish catch is retained.

6.3 At-sea Weighing as a Tool to Monitor Retention or Utilizations Standards

Current methods for estimating discards and options for monitoring retention and utilization standards are discussed in Section 1.8 (Estimating Catch and Discards), Section 4.0 (Monitoring Compliance with Increased Retention Standards), and Section 6.0 (Increased Utilization) of the EA/RIR/IRFA. The use of scales would **not** alleviate most of the monitoring and enforcement difficulties identified in these sections. For example, while scales may provide a more accurate estimate of total catch weight, current procedures for using observer data to determine species composition and the proportion of a particular species retained or discarded would not change with a requirement to weigh total catch.

Scales would not provide direct measurement of discards, nor would they alleviate the uncertainty associated with verifying compliance with retention requirements by comparing observers' total catch weight estimates with the round weight equivalent of processed product (see Section 4.2.3).

Furthermore, it is not possible to assess the potential cost of acquiring, installing, maintaining, and operating scales (or certified bins) on all potentially affected vessels, at this time. It is, however, reasonable to assume that these costs would be **significant**. Because, it appears, total enumeration of catch will **not** substantially enhance monitoring and enforcement of IR/IU, there would be no commensurate off-setting benefit from requiring use of these technologies, under this action.

6.4 Moratorium on Entry

A temporary moratorium on the entry of new vessels into the groundfish and crab fisheries under Federal jurisdiction was implemented January 1, 1996, and will remain in effect through December 31, 1998, unless it is superseded by the license limitation program (see Section 5.6). The moratorium limits access to the groundfish and the Bering Sea and Aleutian Islands Area crab resources off Alaska.

Moratorium qualified vessels are issued a *"maximum length overall"* (MLOA). The MLOA of a moratorium qualified vessel is based on the length overall (LOA) of the original qualifying vessel on June 24, 1992. The reconstruction or replacement of a moratorium qualified vessel is then limited by its issued MLOA. The MLOA of a vessel with an original qualifying LOA of 125' or less is 1.2 times the original qualifying LOA, or 125', which ever is less. The MLOA of a vessel with an original qualifying LOA of more than 125' is equal to its

original qualifying LOA. This provision, known as the "20% rule," allows smaller vessels to be reconstructed or replaced by slightly larger vessels (e.g., to increase safety margins), but prevents larger vessels from increasing in length, precluding significant increases in the fishing capacity of the overall fleet.

6.4.1 Interaction with IR/IU

The requirements of IR/IU can potentially adversely impact vessels currently under the moratorium on entry. Vessel upgrades, which may become necessary because of the requirements of IR/IU, are limited by the 20% rule. Vessels unable to upgrade because of the moratorium length restrictions necessarily would have to curtail or cease operations.

6.5 License Limitation Program

The license limitation program (LLP) has been proposed by the Council as another step in developing a comprehensive and rational management program for the fisheries in the U.S. EEZ off Alaska. Like the moratorium on entry, LLP would establish a MLOA for a qualified vessel that will be based on the length overall (LOA) of that vessel on June 24, 1992. The same 20% rule also would apply, except that the LLP would also require that a vessel remain within a specified vessel length class based on its June 24, 1992 LOA. This added limitation could exacerbate the problem of upgrading a vessel to meet the requirements of IR/IU, cited above.

6.5.1 Interaction with IR/IU

The requirements of IR/IU, i.e., retention and utilization of 100% of specific groundfish species, can potentially impact vessels that would be under the future LLP, if it is approved. The LLP currently is scheduled for implementation in 1998. Vessel upgrades, which may become necessary because of the requirements of IR/IU, are limited by the length restrictions and the specific vessel classes of the LLP. These restrictions can adversely impact vessels that lack sufficient size to meet the new retention and utilization requirements.

Vessels unable to upgrade because of the length restrictions will necessarily curtail or cease operations. Unlike the moratorium on entry, however, a vessel under the LLP must be specifically classified as a catcher/processor to process. This requirement could cause a direct conflict with any utilization option that requires processing, further limiting an operator's ability to adjust optimally to the IR/IU requirements. Vessels classified as catcher vessels would be prohibited from processing under the LLP.

The vessel length and processing limitations of the LLP may impact an operator's ability to upgrade a vessel in order to comply with the new retention and utilization requirements of the above options, thereby affecting the behavior of the operator, either by reducing or eliminating the viability of the fishing operation because of the inability to upgrade. This impact, however, is potentially somewhat ameliorated by the fact that a person can upgrade by obtaining a license of sufficient length and processing capability by transfer. The number of such licenses is, however, limited.

6.6 Loadline and Vessel Classification

There are other federal requirements which may impose significant adverse economic impacts on some segments of the industry, as a direct consequence of retention and utilization mandates.

Three principal requirements may impose significant barriers to IR/IU compliance for some (primarily the smallest) operations currently participating in the BSAI groundfish fisheries. These include, 1) "Certificate of Compliance" [46 CFR sec. 28.710]; 2) "Loadline Certification" [46 CFR sec. 41-47, subsec."e"]; and 3)

"Survey and Class" certification [46 CFR sec.28.720].[21] Not every vessel would be required to acquire each of these certifications. However, each of these certifications have the potential to impose significant costs on any operation which finds it necessary to obtain one or more of these.[22]

For fishing vessels that wish to do *any* "processing" onboard (as defined by the U.S.C.G.), the operation *must* be both "loadlined" and "classed." The American Bureau of Shipping (ABS) estimates that the cost of obtaining "loadline" certification for a vessel of the type cited above would be, at a *minimum*, $35,000, plus $500 per year for the required annual inspection (assuming the vessel is currently capable of meeting the loadline standards. If not, add to this estimate the cost of any structural changes which are required to meet these minimums. For some existing vessels, it may not be possible, short of rebuilding the boat from the keel up, to meet these minimum requirements).

"Class" certification could be expected to cost, at a *minimum*, an additional $70,000 to obtain (again assuming the vessel currently meets the "classification" threshold standards. If not, add to this the cost of bringing all systems up to those minimums).

For the type of vessel in question, "Certificate of Compliance" costs could be expected to be between $500 and $1,000, assuming the vessel meets the required standards (otherwise, add the cost of upgrading to these minimums).

While the direct costs, cited above, to acquire the necessary certifications can be roughly approximated, the economic impacts of "down-time,"[23] as well as the re-fitting costs associated with extensive structural, technical, and/or mechanical modification, have not been accounted for in these estimates, since they would vary from case to case. Nonetheless, the forgoing should be regarded as the "lower bound" estimate of the cost of obtaining these mandatory certifications, for vessels compelled to add capacity to their current operations to comply with the proposed IR/IU action.

6.7 Economic Versus Regulatory Discards

The two general categories of groundfish discards, "economic" and "regulatory," are discussed in the EA/RIR/IRFA under Section 1.7. A preliminary determination of the proportions of each category relative to the total amount of recorded discards in 1994 and 1995, however, produced questionable results due to a simplifying assumption used to speed the analysis. A more in depth analysis of the available discard data will be necessary to properly distinguish the two categories of groundfish discards.

7.0 Economic and Socioeconomic Impacts of Improved Utilization

At its April 1996 meeting, the Council reaffirmed it commitment to examine three "utilization" options (each alternative to the Status Quo). The three address the objective of obtaining more complete use of retained bycatch, each in a different way. The options are treated, in order, below.

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[21] Per. comm., Lt. Cmd. Mike Gardiner, U.S. Coast Guard, Juneau, AK., April 1996.

[22] Per. comm., Michael Macri, American Bureau of Shipping, Seattle, WA., April 1996.

[23] These could include, potentially, loss of fishing time, resulting in foregone revenues, lost employment of crew, etc., as well as transit time and expense to and from a shipyard, among others.

7.1 Monitoring IU Compliance

The ability of NMFS to monitor **any** utilization requirement will be *quite limited.* The risk of detection of an IU compliance violation will likely be substantially smaller even than that of detecting an IR compliance violation. This is so for several reasons.

First, "leakage"[24] will be unavoidable. Some fish are inevitably damaged beyond use in both the fishing and processing activities of any operation and, therefore, will not be utilized, in the sense of producing a final product.

Second, use of PRRs to monitor compliance on an individual operation basis is expected to present serious difficulties (see the discussion of PRRs in the EA/RIR/IRFA). Their usefulness at the individual operator level is, as previously noted, problematic.

Third, no monitoring is possible beyond the "primary" processing level, constraining further the ability to assure IU compliance. NMFS-certified observers are not generally able to provide a level of coverage of the processing operation of a vessel that could be said to represent a systematic monitoring program, given their other duties and priorities. Establishing a corps of "utilization monitors" was contemplated by the Council's IR/IU Industry Working Group, but rejected as **too costly and burdensome** for the improvement in compliance that might reasonably be expected.

7.2 Improved Utilization

The effect of Directed Fishing Standards on retention and utilization may be very substantial. Unfortunately, it has not been possible to complete the analysis of "regulatory" discards in time for their inclusion in this analysis. Therefore, the following estimated "discard savings" and "retained product" values should be regarded as preliminary *upper-bound estimates* of the potential increase in output attributable to adoption of the competing IU options. In fact, the actual savings may be substantially lower if "regulatory" discards account for a significant portion of total discards.

7.2.1 Contrasting the IU Options

Within these constraints, and under the assumptions cited above, the following preliminary impacts can be projected for the IU options under consideration.[25] IU Option 1 is, as anticipated, the *least burdensome* of the three options in as much as it does not specify, or otherwise constrain, the manner in which an operator may comply with the utilization requirement. That is, by providing the maximum flexibility to the operator to "optimize" production, within the constraints of its own physical plant, while achieving the objectives of utilizing all retained catch, this option is the least costly of the three solutions under consideration. IU Option 1 also happens to produce the largest value from the additional retained and processed product, e.g, $143.4 million in *"discard savings value"*, based on 1994 catch estimates. In 1995, the same estimate is $137.5 million. Add to these, the "retained product value" ($692.6 million in 1994; $728.2, in 1995) from the species/quantities historically retained and the total output value under IU Option 1 would have been approximately $836.0 million in 1994, $865.7 million in 1995, all else equal.

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[24] Leakage, in this context, is defined as whole fish which are not processed, as required under IU.

[25] Note that it is implicit in these estimates that no operational adjustments are made in response to the IU requirements. That is, we have not attempted to predict the response of the industry.

Within the limiting assumptions of this analysis, IU Option 2 is confirmed to be the *most restrictive* of the three options, imposing strict product-form requirements on all retained catch of the four species of concern, including "discard savings" output. Each of the three suboptions have a differential impact on fishery performance and value. In 1994, for example, under "suboption A" (i.e, 50% primary product requirement), none of the potentially impacted fisheries appear to be in jeopardy of non-compliance. The estimated value of all product deriving from "discard savings", when production is in compliance with the 50%-criteria, is estimated at $135.4 million.[26] Under this scenario, the value of the traditionally "retained product" was estimated at $692.6 million, for 1994 catch levels. The total output value, for all potentially IR/IU impacted fisheries (based on 1994 data), would have been $828.0 million.[27]

Under "suboption B"(i.e., a 70% compliance limit), using the 1994 example, two fisheries would have been below the *minimum* primary product threshold. These two fisheries were 'shoreside' P.cod, which failed to meet the requirement on rock sole bycatch, and 'shoreside' Greenland turbot, which also failed on rock sole. If these two fisheries cannot adjust (and no other operations increase their catch proportionally) the potential loss to "discard savings" output is $1.6 million.[28] The value of the "retained product" of these two fisheries is also potentially put in jeopardy (but not necessarily completely foregone). These results **do not** imply that these target fisheries will necessarily be closed down if IU Option 2 is adopted. Only that, at the 70% threshold compliance level, these two fisheries would have been in "non-compliance," all else equal, and could have faced a range of economic, logistical, and legal difficulties.

The correct interpretation of these results would be that a *"red flag"* should be raised, alerting one to a *potential* problem here. The reductions in the aggregate value estimates reflect the retained product values and discard savings values at-risk for the species which causes the compliance crisis, e.g., rock sole in these cases. In reality, the entire target fishery's output could theoretically be placed in jeopardy due to compliance failure. Under these circumstances, the distinctions between suboptions would be much greater. In any event, however, **either** estimate should only serve to focus attention on target fisheries which might be at-risk.

"Suboption C," which sets the primary product compliance threshold at 90%, obviously puts significantly more target fisheries at jeopardy due to "non-compliance" (see suboption C total in Table 6B).

IU Option 3 is intermediate between 1 and 2 with respect to the potential impact it may have on utilization compliance. Like IU Option 2, as the threshold level is increased, fewer fisheries are able to successfully comply, and thus the *risk* of imposing a significant economic burdens increases. For example, if the compliance threshold is set at 50%, i.e., up to 50% of the retained catch of each species of concern may be converted to meal, the estimated discard savings value is $143.4 million (incidently, the same as under IU Option 1). The "retained product" value was $692.6 million, for a total product value of $836.0 million. Referring to the last column in Table 6C, *"Percent Meal,"* it appears that no target fishery would have a problem meeting the 50% threshold

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[26] This assumes no physical constraints on processing and hold capacity.

[27] The requirement that a fixed percentage of the total retained catch be processed into one or more "authorized" product forms actually resulted in a slightly lower aggregate output value than the unconstrained option. In part, this is due to the weighted average price used for "authorized" and "unconstrained" product outputs. These were derived from 1994 price and production records (1994 prices and 1995 production for 1995) and are therefore assumed to be a reasonable approximation of gross product price.

[28] It is important to emphasize that these are "fishery-wide" estimates. Within any given target fishery some individual operations may be expected to have little or no difficulty meeting the threshold, even though in the aggregate their "target" appears to be in jeopardy, while others may be unable to achieve the compliance minimum.

(on the basis of the 1994 example). If the threshold were, instead 30% maximum meal production, and assuming no other operator increased catch proportionately and no other adjustment is made, the value of the "discard savings" would decline to $141.9 million (the "retained catch" value also declined slightly), indicating, in this case, two target fisheries ('shoreside' P.cod and turbot, the same two cited as 'at risk' under option 2) could *potentially* find compliance a problem. At a 10% maximum meal threshold the discard savings value estimate would decline even further, and many more of the target fisheries would be *potentially* at risk due to an inability to meet this standard (see Table 6C, any meal percentage greater than 10% would fail this compliance test).

Clearly, these are crude, highly simplified estimates of the potential impacts that adoption of one of the IU options could impose on the several target groundfish fisheries that will be regulated by any IR/IU amendment. For example, it is *assumed* that, 1) no adjustments in product mix will be made, 2) no other fisheries increase catch to absorb the foregone catch of the potentially non-compliant fisheries, 3) product and hold capacity are not constraining, and 4) all vessels in a fishery operate at the mean, e.g., are identical with respect to catch composition, product mix, PRRs, etc. The first two assumptions may overstate impacts, the third may overstate the discard savings yield, and the fourth may understate discard savings.

One could expect that, in the face of constraints on utilization of retained catch, some adjustments would be made to lessen these projected impacts. Certainly, the potential loss associated with foregone production can be decreased, although not without increasing harvest and production costs. But it is unlikely, given the capacity and nature of the existing industry, that all of these adverse impacts can be ameliorated, at least in the short run.

On the basis of the foregoing preliminary analysis (and within the limitations of the simplifying assumptions made), it appears that, of the three IU options under consideration, IU Option 1 imposes the least economic and operational burden on the industry, may produce the largest "discard savings value," and retains the maximum possible flexibility for the industry to respond to changing markets, while achieving the Council's basic objectives of reducing discards and more fully utilizing retained catch. IU Option 1 also provides each operation the opportunity to "optimally" utilize its existing physical plant to comply with the IR/IU requirements, thus reducing potential short term adjustment costs. Since these adjustment cost could be expected to be most burdensome for the smallest, least mobile, and least operationally diversified participants in the fishery, the distributional effects of IU Option 1 are also likely smallest among the three IU options.

8.0 Improved Utilization and the Marketplace

Markets are dynamic organizations which respond to numerous and varied forces. Unfortunately, very little analysis is presently available regarding market characteristics for most of the principal groundfish products derived from the BSAI fisheries. Notwithstanding these limitations, several qualitative observations concerning the probable response of the market to IR/IU can be made.

Some products from the BSAI fisheries represent only a small part of the total supply within a global market, e.g., fishmeal. In these cases, changes in output which might reasonably be anticipated in response to IR/IU requirements may have very little discernable impact on the market, as a whole, although they may affect U.S. market-share.[29]

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[29] If the entire quantity of discards of the four species of concern in all potentially impacted fisheries were converted into any single product form, e.g., fishmeal, the market for that product would clearly be expected to react, perhaps dramatically. However, given the capacity limitations which prevail in the BSAI domestic groundfish fishing and processing sectors, this extreme response to IR/IU, and the attributable market effect, is not feasible.

Other product forms produced from these fisheries may represent a very substantial share of the total supply entering the market, e.g., deep-skin fillets and/or certain grades of pollock surimi. As a result, significant changes in supply may induce equivalently large responses in price and even market structure (e.g., substitution effects). In general, the more generic the product form and the larger the range of potential substitutes available in the marketplace, the smaller will be the expected market response to changes in supply. The more specialized the product form and more narrow the market, the greater the probable market response to supply changes, all else equal.

The ability of the U.S. fishing and processing sectors to remain competitive in the world seafood marketplace will largely depend upon its capacity to respond "optimally" to dynamic international market forces. Without such flexibility, market opportunities may be foreclosed, to the detriment of the individual U.S. fisherman/processor, the domestic fishing and processing sector, and the Nation, as a whole.[30]

These conclusions tend to support the position of the Council's IR/IU Industry Working Group which advocated providing the "maximum" opportunity for flexibility on the part of the individual operator to respond quickly and efficiently to market signals, while adhering to the spirit of the IR/IU proposal to reduce discards of whole fish and improve recovery of useable products from bycatch species. This, again suggests that IU Option 1 may be the **least potentially burdensome** of the three "utilization" options under consideration, while achieving the Council's objectives of, *"provide an incentive for fishermen to avoid unwanted catch, increase utilization of fish that are taken, and, thus, reduce discards of whole fish."*

[30] The United States benefits from export trade. The U.S. is also a major importer of groundfish products. Any reduction in U.S.- "market-share" within the world seafood market could adversely impact the Nation by negatively impacting its relative balance-of-trade.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20230

August 27, 1996

MEMORANDUM FOR: Steven Pennoyer
Director, Alaska Region

FROM: Michele Kuruc - GCEL
for Lisa Lindeman - GCAK

SUBJECT: Increased Retention/Increase Utilization; Preliminary Comments

The NOAA Office of General Counsel has reviewed the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the Improved Retention - Improved Utilization (IR/IU) Program, dated July 1, 1996. We have the following preliminary comments on the program outlined in the EA/RIR/IRFA.

Enforcement and Monitoring - Monitoring Alternative 3

The Council has proposed two methods within Monitoring Alternative 3 (Alternative 3) that rely on a comparison of "secondary" data from different sources. The first method involves comparing catch round weights reported in a vessel's fishing logbook with round weight equivalent catch estimates obtained from a hold count. The second method involves comparing observer-collected data[1] with catch and production reports submitted by a vessel to the Agency.

Under either method identified in Alternative 3, the analysis in the administrative record should resolve at least three issues regarding these data sources. First, if PRRs are used, the Council and/or NMFS should determine whether the published PRRs are reasonable for this purpose and supported by an adequate administrative record. PRRs can vary with season,

[1] The observers presently do not collect retained catch data. Although this memo only addresses the Monitoring Alternative 3, it should be noted that any method that relies upon observer sampling data to prove that a violation occurred raises a variety of enforcement challenges that should be considered before deciding to adopt that monitoring method.

operation, etc, and they may not be appropriate to monitor production performance of individual operators. Second, if Coast Guard estimates of product weight are used, difficulties and potential costs in estimating product weight at sea should be considered. For instance, the physical inspection of the product by a boarding officer may require escorting of the vessel into port so that a case-by-case count can be conducted in an orderly and safe manner. This would have to occur in any situation where the Coast Guard believes that the volumetric hold count is either not reliable (e.g. due to vessel configuration) or where the results of the volumetric hold count indicate the potential for violation of the retention standard.[2] The need for escort to port and a case-by-case hold count is disruptive and costly not only to fishery participants, but it consumes a substantial level of enforcement resources.

Third, the administrative record and implementing regulations should reconcile the use of data sets from different sources.[3] Combining or comparing catch estimates from two or more sources may result in inconsistent results merely because the sources are difficult to reconcile. The Council and/or NMFS should provide analysis to show what degree of correlation can be expected.

In addition to these basic monitoring concerns, the Council is considering whether to recommend a "phase-in" of the program and how to reconcile the IR/IU program with the directed fishing restrictions. Adoption of a phase-in and failure to ameliorate the conflicts with the directed fishing program will greatly increase the complexity of the IR/IU program.[4] For instance, both options would require the fishing industry and NMFS to monitor not only whether the IR/IU species were discarded, but also the proportion of the total catch of each species discarded. NMFS/Enforcement, the Coast Guard and the Observer Program have stated that a phase-in (i.e. increasing, over a period of years,

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[2] Due to reliability concerns, the Agency has never brought an enforcement action where a volumetric hold count was the only evidence available to prove whether a mislogging or directed fishing violation had occurred.

[3] The EA/RIR/IRFA identifies that sources of data for monitoring will be vessel-submitted daily and weekly reports containing catch round and product weights, observer sampling data, and catch estimates derived from applying PRRs's to hold content estimates.

[4] See below for a discussion relating to the legal difficulties relating to the proposed methods discussed in the EA/RIR/IRFA for reconciling the IR/IU and directed fishing programs.

the percentage of the total catch of IR/IU species that must be retained) will prevent detection of most violators because of the difficulty of determining whether a particular discarded fish was within the required percentage. Adoption of an unenforceable phase-in would not serve the purpose as explained in the EA/RIR/IRFA of "holding industry's feet to the fire." We suggest that the Council consider delaying implementation of the IR/IU program for rock sole and yellowfin sole and eliminating directed fishing closures for IR/IU species to facilitate enforcement.

Enforcement Resources

Both methods outlined in Monitoring Alternative 3 will require extensive enforcement resources that the Agency presently does not have. Although the EA/RIR/IRFA asserts that "no significant additional cost" would be attributed to this alternative, this statement is apparently based upon the assumption that the objectives of the IR/IU program can be "substantially" achieved by providing an incentive for honest operators and by increasing the risk of detection of violations. This statement is misleading to the extent it represents that Alternative 3 would create a risk of detection without additional resources being dedicated for detection and prosecution. As we have found in the context of the Vessel Incentive Program, the complexity and required number of witnesses in each case results in very few cases being investigated and referred to this office for prosecution. The IR/IU program can be expected to result in equally complex cases. In light of the multitude of problems and complexities identified in the EA/RIR/IRFA and above, this office is concerned that the goals of the program will not be accomplished if enforcement of the program is not accorded sufficient administrative and enforcement resources.

The EA/RIR/IRFA acknowledges that staff will have to be diverted from other functions to enforce this program. Regardless of which monitoring alternative is selected as part of the IR/IU program, the Agency will have to evaluate which cases to investigate and prosecute, and which cases to decline. That decision will depend upon whether the necessary resources are available to effectively investigate and prosecute that class of cases, and whether enforcement of that particular regulatory program is an Agency priority. To put it simply, if violations under this regulatory regime are to be investigated and prosecuted without additional resources, then violations of other regulations may have to be disregarded or declined for prosecution.

Increased Utilization -

The EA/RIR/IRFA identifies three options for improved utilization. Option 1 would require that the sum of the product weights of all primary and ancillary product forms be at least 15% of the logged catch weight of each of the 4 species. Option 2 would require that a minimum percentage (50%, 70% or 90%) of

the total catch of each species be processed into "authorized" primary product forms. Option 3 would establish the maximum percentage (50%, 30%, 10%) of retained catch that could be processed into meal.

Under any of the foregoing options, enforcement will be severely limited for a variety of reasons. The EA/RIR/IRFA identifies that violations would be detected either by comparing reported catch and product output (using PRRs), or during a boarding where the vessel's reported product would be compared to hold count data. All of the monitoring concerns and use of PRRS's identified above and in the EA/RIR/IRFA relating to the Increased Retention program also apply to the Increased Utilization program. Moreover, under Option 2, it may be difficult for enforcement officers to acquire the expertise to determine whether a product is an "authorized" primary product.

More importantly, the EA/RIR/IRFA asserts that although significant "leakages" of unprocessed fish will occur, the envisioned monitoring will detect gross or egregious violations, and that such risk of detection is "expected to provide a sufficient disincentive to achieve an acceptable level of compliance." EA/RIR/IRFA at 118. Again, this conclusion is misleading. Although it is possible that some violations may be detected because of a serendipitous sighting (for example, of a whole Pacific cod going over the side), such cases have minimal correlation with detection of "gross" or "egregious" violations. For the reasons cited above relating to the Increased Retention program, the multitude of ways for fish to escape the system makes it unlikely that the purposes of the program will be achieved without a significant increase of administrative and enforcement resources.

In summary, for all monitoring alternatives under the IR/IU program, the record should contain data and analyses concerning the costs and effects of each alternative on achieving the purposes of the program. Specifically, for each alternative the data and analyses should address the costs imposed on the fishing industry, the costs imposed on the Agency for enforcing the program, including the kinds, quantity and quality of data necessary to support prosecution of a violation, and an assessment of administrative, investigative, observer and prosecutive personnel necessary to implement the program.

Statutory Authority

Some of the options listed in the EA/RIR/IRFA are not authorized by the Magnuson Act. As stated in the EA/RIR/IRFA, the Magnuson Act does not authorize direct regulation of on-shore processors.[5]

The Magnuson Act does not provide legal authority for the Council's proposals for dealing with the potential for continued regulatory discards when groundfish species are on bycatch-only or prohibited species status. The first concept would require that all bycatch of IR/IU species be retained, whether or not these species were on bycatch-only or prohibited species status. Amounts in excess of the specified Maximum Retainable Bycatch amount would "be surrendered to NMFS and sold so that vessel would not profit from these catch amounts." This proposal is contrary to the explicit provision in the Magnuson Act that allows forfeiture of fish only when that fish was taken or retained in connection with or as a result of the commission of a prohibited act. 16 U.S.C. 1860(a). Moreover, even if the Agency had the authority to require forfeiture in the absence of a violation, the administration of such a program would consume large amounts of Agency enforcement resources.

The second proposal for directed fishing would expand the first so that "NMFS would reimburse vessels for the operational cost associated with retaining bycatch species in excess of MRB amount." Even if NMFS is authorized to receive and sell the fish, the funds would not be available for NMFS program costs or to pay "operational costs" incurred by the fishermen.[6] If NMFS paid fishermen for their "operational costs," the funds would

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[5]See a December 1, 1989, memorandum from the NOAA Office of General Counsel to the Council summarizing the Council's authority to prohibit roe-stripping and increase retention and utilization of pollock. The memorandum is summarized in the EA/RIR.

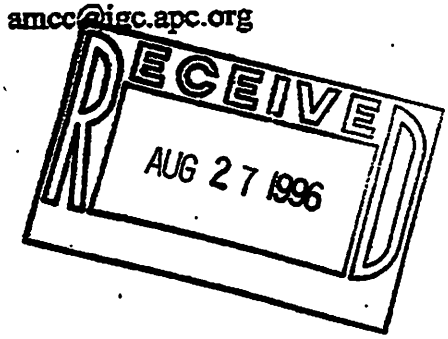
[6] The Magnuson Act, 16 U.S.C. 1861(e)(1), allows proceeds from fines, penalties and forfeitures of property to be deposited in the NOAA Enforcement Fund only if there is an underlying violation. The Magnuson Act restricts expenditures made from the NOAA Enforcement Fund to only certain costs which do not include the type of "operating" costs proposed under this option. The "miscellaneous receipts" statute, 31 U.S.C. 484, requires that all money received be deposited in the general fund.

come from NMFS's appropriations.[7] In addition, these options raise due process concerns and would require additional agency resources.

cc: DGC - Jay Johnson
GCF - Margaret Hayes
F/EN5 - Steve Meyer
USCG - CPT Vince O'Shea
NPFMC - Clarence Pautzke

[7]GCAK has not ascertained whether this is a legal use of appropriated funds.

ALASKA MARINE CONSERVATION COUNCIL
Box 101145 Anchorage, Alaska 99510
(907) 277-5357; 277-5975 (fax); amcc@igc.apc.org



August 26, 1996

Rick Lauber, Chairman
North Pacific Fishery Management Council
605 W. 4th Ave.
Anchorage, AK 99501

RE: Comments on EA/RIR for the proposed Improved Retention/Improved Utilization Program

Dear Mr. Lauber,

Since the Council took up the proposed IR/IU program, AMCC has testified before the AP and the Council and has served on the IR/IU Committee to formulate the program. We have advocated for the conservation objectives stated in the program's Purpose and Need for Action. As stated in Section 1.1 of the EA/RIR, the purpose is to "provide an incentive for fishermen to avoid unwanted catch, increase utilization of fish that are taken, and, thus, reduce discards of whole fish."

We strongly support this objective but we are concerned that, in its current form, the proposed program does not explain how this objective will be met and how NMFS will evaluate the program's success. Throughout the IR/IU discussion at the Council and committee levels as well as in the EA/RIR, there is an assumption that retention requirements will induce avoidance of bycatch by nature of the economic burden of holding lower value fish and processing lower value products. But assumptions are not sufficient justification to base decisions to approve the program. The IR/IU program requires a method for comparing whether or not retained fish that used to be discarded represent a reduction in total removals. How else will we know if bycatch is being avoided? If there is no method for making that determination, the Council cannot evaluate if the conservation objective of the program is being met.

The EA/RIR acknowledges the shortcomings of observer data as a method of accounting for catch and bycatch. The document states, "It is difficult to assess the accuracy of either industry or observer estimates. In the case of at-sea operators, neither source provides direct measurement of discards, and once the discards are made, estimates cannot be verified." (p. 8)

The IR/IU program is an opportunity to account more accurately for the total catch. Since all the retention species will be on board, this is an opportunity to gather empirical data to determine the weight and age composition of the catch which is so important to management decisions. The empirical data may or may not closely match the observer estimates. Either way, it would be good to know that. Also, the program would then allow for a real evaluation of the program's success at meeting the objective to "avoid unwanted fish."

The EA/RIR says "To the extent that harvesters are able to avoid bycatches of unwanted fish, [discards] may be further reduced by imposition of a retention requirement. At present no empirical data are available with which to assess the potentiality. Presumably, adjustments to a retention requirement would occur over time as fishermen learn new techniques, or adjust fishing practices, patterns, and areas. It may require the observation of these operations over several seasons under a retention program before such information could be obtained." (footnote 11 on p. 21). If this information is to be obtainable after "several seasons," it is essential that the IR/IU program incorporate a method for collecting the necessary data.

Without concrete methods for evaluation, this program will mislead the public in believing bycatch has been reduced. Fishermen throughout Alaska's coastal communities are concerned about the potential inaccuracy in estimates derived from observer data. We are concerned about the impacts of removing juvenile fish (which comprise a large portion of economic discards) from the ecosystem. It will not help to take the same amount of young fish and redefine those discards as product. For the IR/IU program to be a conservation success, there needs to be measurable change in the way the groundfish fisheries are executed to avoid bycatch.

Thank you for this opportunity to comment.

Sincerely,

Dorothy Childers

Dorothy Childers
Executive Director

KODIAK FISH COMPANY
FT ALLIANCE FT LEGACY FT PROVIDER

326 Center Avenue
Kodiak, Alaska 99615

2977 Fox Road
Ferndale, Washington 98248

September 10, 1996

Mr. Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Mr. Lauber:

Following are our comments on the review draft of the EA/RIR for the Council's proposed Improved Retention and Utilization (IR/IU) program.

The EA/RIR does point out that there will be disproportionate impacts on certain sectors of the industry under an IR/IU program. To understand how these proposals will affect vessels of any certain length requires using something other than the 60 foot and 125 foot categories which are artifacts of earlier rulemaking. Whether a vessel is 60 feet and below or 125 feet and above is irrelevant in measuring the impacts of IR/IU regulations. Vessel lengths as impacted under an IR/IU program would have to be more specifically related to the tasks required under a given IR/IU option.

For example, by allowing fish meal to qualify as utilization of whole fish, only a very specific sector of the industry benefits. That sector is small in number but voracious in appetite and dominates the pollock business both on shore and offshore in the Bering Sea. The remaining fleet (and shoreside plants as well) have no options except to make food for human consumption. And for a significant portion of the offshore sector, only a very limited number of food products may be made because other regulations which apply only to vessels do not allow them to upgrade to more sophisticated forms such as fillets or surimi.

In order to make fish meal on a vessel, aside from loadline and other related regulations, the vessel must be large enough to contain a fish meal plant. For a vessel to be large enough to contain both a fish meal plant and a conventional processing plant which will produce value added human food products, current technology requires a minimum length of 250 feet LOA. A vessel which contains only a fish meal plant and no other processing or storage capacity must be at least 160 feet LOA. And vessels below 160 feet would not be large enough to hold any currently available commercial fish meal plant and so would be unable to produce fish meal.

So, therefore, under the meal option, vessels less than 160 feet would be unable to make meal and so would be unable to compete under this option. They would have to retain all the regulated species at whatever percentages required and would have to make human food out of them. Needless to say, these vessels will be forced to produce fish products which are currently without market value. Their production of the H/G fleet's traditional high value, North Pacific species which the market loves and pays well for will become a minor percentage of their deliveries. The overall value will be well below breakeven for everyone in this category. These vessels will go out of business.

Those vessels 160 feet to 250 feet could, if loadlined, remove all existing processing equipment which enables them to produce value added human food products and replace this with a fish meal plant. Of course, the meal plant alone would cost well over a million dollars without factoring in the time and money cost of the refit. Additionally, these vessels would then produce nothing but fish meal - and so be converted from vessels producing high quality value added human food to vessels in an "industrial fishery". They will produce good fish meal which they'll sell to the growing salmon farming industry. I don't know if they'll make enough money doing that to stay in business.

Those vessels 250 feet and above could add, if they do not already have, a fish meal plant which would enable them to continue to produce high quality human food products as well as fish meal. These vessels may be able to expand operations into those species formerly used by the under 160 foot. They will probably stay in business and may flourish.

I believe then, that the vessel length categories which are relevant to the meal option are: 250 feet and above, 160 feet to 250 feet, and less than 160 feet.

I would suspect that shore plants also fall under three similarly defined categories. Those categories could be described as those unable to make meal; those who could make meal but only by removing all other processing capability; and those who can (or could) both make meal and process other product forms. As in the offshore sector, those unable to make meal would likely fall out of the groundfish business. The middle group's economic well being would depend on market conditions for meal and capital costs of their facilities. The larger plants with both processing and meal capacity would likely gain market share and would probably flourish.

Impact on catcher fleets would depend less on the size of their vessels than on who they sell to. However, regulations which encourage dominance by larger entities are unlikely to be good news for catcher boats.

The notion that rock sole and yellowfin sole should be phased in due to a lack of markets

for small sole while cod and pollock are fully marketable is nonsense.

Cod is less problematic than pollock - for more than one reason. Cod is far less abundant in absolute numbers than pollock and so constitutes less pounds of bycatch discards than pollock. And, less sophisticated cod products such as head and gut (where a loadline is not a requirement), does have a market - at least at some price level. The value varies considerably from year to year but generally if one puts up a quality product, a buyer can be found.

Pollock, on the other hand, has always required that more value be added in order to sell the fish. Without surimi technology and more efficient fillet machines developed in the last decade, it is doubtful if pollock would be the barnstorming fishery we see today. The market for head and gut pollock has been nonexistent for the past several years.

There is a lot of pollock out there. Out of two million metric tons TAC in the Bering Sea, pollock is well over one half of that. Not surprisingly, then, pollock is a big portion of the bycatch in the head and gut fleet, among all bottom trawlers, and among hook and line boats as well. And much of this pollock is caught and discarded during pollock "A" season and "B" season and so would have to be retained one hundred percent. And virtually all this pollock is unmarketable as a head and gut product.

For all intents and purposes, then, pollock except for products such as fillets, surimi, and roe should be considered unmarketable. Believe me, I wish it were otherwise. I have better markets for arrowtooth, Alaska plaice and skatewings than I have for pollock.

At this juncture, maybe I should ask whether you care if I have a market for this fish or not? If you don't, then you haven't watched the dilemma of the salmon fisheries in Alaska this summer. For starters, let's look at the host of contradictions we've already legislated in the North Pacific. We've embarked on a decades long and extremely successful quest to produce more and more salmon. And, guess what, the rest of the world has also embarked on a similar and also successful course. The difference being we've concentrated on wild stocks and they've focused on farmed. The marketplace doesn't know the difference - except at the end user level where differences in freshness, quality, consistency, and availability are more important than where the fish came from.

We just elected Governor Knowles last year - his campaign slogan was "Market, Market, Market." And he's followed up on that campaign promise with some action. He allowed an exemption in the state's wanton waste laws to allow roe stripping of hatchery fish - the justification being that the carcasses are difficult to market. I agree wholeheartedly. It doesn't take a rocket scientist to figure out that in a market already bulging with more salmon than it can eat, adding a whole lot of dark, emaciated fish just doesn't work. Not to mention what it does to sully the reputation of Alaska's wild salmon products which

are already struggling from the impact of farmed fish.

Nevertheless, the waiver allowing roe stripping has outraged much of the salmon industry - on both sides of the issue. From Alaska Fisherman's Journal, September 1996, "Some fishermen claimed that tenders were directing them to catch "only females." and "Leon Woodrow said a room full of gillnetters got directions to dump male fish at a July 20 meeting with Ward Cove buyers. It's a charge that the company denies." The processor in question said what he really said was " I said bring the better quality fish."...and..."People are doing all kinds of different things out there that I have no idea of."

I have complete sympathy with everyone involved in what should be a cause of celebration - great fishing. But I know that just because you can catch it or can't avoid catching it, doesn't mean you can sell it. Or should sell it. Or should stop making a high value, high quality world renowned product and instead grind everything into a meal which can be used to feed more farmed salmon.

Another of the Governor's actions fulfilling his campaign's marketing theme is the publication by the Alaska Department of Commerce and Economic Development of the "Alaska Fisherman's Direct Marketing Manual". This was developed in response to growing demand from fishermen who wanted to know how to get started in marketing their own product - a desire exacerbated by a steady decline in dock prices for salmon. In the book, the following advice is given, "when you go out fishing, you don't think about filling your boat up, you think about filling your customers' orders. You are no longer a fisherman first; your priority now is as a businessman meeting your customers' needs."

IR/IU as currently envisioned flies in the face of Governor Knowles admonition to Alaska's fishermen to "Market, Market, Market". IR/IU is more in line with Henry Ford's marketing advice when he said, "Give them any color they want, as long as its black." Or something like that. I don't know how many black Fords are being sold these days, but I can tell you how many dark chum salmon - and how many small H/G pollock - went to market and left any cash in the till after expenses were paid. None.

And then there's the absurdity of working to develop a market for a product which we are actually trying to learn not to catch - meaning that as we become more successful in not catching undesired species, we can no longer supply them. I would be reluctant as a buyer to work to develop markets for products which are likely to be in short supply in a short time.

There are going to be some very difficult implementation problems - redirection of effort in unexpected ways; disruptions in application of bycatch caps and directed fishing

standards; vessel upgrade restrictions in the license limitation and vessel moratorium regs; enforcement dilemmas for phased in regulations; and a host of others which will probably be made clear by other commenters better than I could.

Understanding the limitations of many vessels to produce products which require the vessel be loadlined is also essential. Loadlining is not a matter of painting a line on the side of a boat. It is an exacting procedure which generally is only done during new construction. Vessel ribs, for example, must be a certain distance apart in order to be loadlined. Many vessels ribs are different than the loadline standard meaning that the vessel would have to be completely taken apart and be put back together again in order to qualify. Both of my vessels fall in this grouping. This is obviously not feasible, therefore making any vessels incapable of being loadlined also incapable of doing any products more complex than headed and gutted. The ability or not to become loadlined should be analyzed before any final decision is made about IR/IU.

Finally, any of these regulations should apply across the board. If you exempt certain portions of industry because they're too small, or it would cost too much, or they don't throw away quite as much as someone else, or their volume of discard is low even though their percentage is high, or their percentage of discard is low though their volume is high and so on and so on; you will end up exempting virtually the entire industry.

Our discard in the Bering Sea is not a conservation issue. Every fish which is discarded counts against a TAC. I know the pollock processors look longingly at what I catch and discard of pollock. I would wish them to have it and I'm going to try very hard not to catch it. But the fact remains that as long as pollock is dominant in the North Pacific, people other than pollock fishermen are going to catch it. World markets aren't created when the Council snaps its fingers. Making a market isn't an arena in which I have much influence either.

Better retention and better utilization is a great idea. Throwing fish away costs me money - under the current derby management system, I find little opportunity to innovate my way into doing less of that. I would like to see a plan which pushes the industry in a direction of management which tolerates less discard without specifying the means by which this is accomplished. The fisheries I'm involved in are driven by bycatch issues - not by TAC. A vessel bycatch accountability program as envisioned by some could slow these fisheries down and encourage innovations which lead to less waste.

Implementation of any of these options as currently written will create a nightmare and change the North Pacific in ways you don't intend and probably don't want. I believe we should move ahead on IR/IU but I think that we should move ahead a step at a time. Do what can be done immediately, learn from that, set some timelines as a carrot and stick for industry, framework some regulations to allow flexibility to adapt as the nature of the

fishery changes, move quickly on steps with smaller impacts and more slowly on those which will wipe out entire segments of the industry. The complexity of the regulations posed by IR/IU demand more time for adaptation. The industry as it currently exists is shaped by regulations made over decades - some of these regulations created discards and unraveling that web without considering the consequences is unjust.

Sincerely,

T Kandianis

TERESSA M. KANDIANIS

Attachments

FISH FOREVER September 12, 1996

Richard B. Lauber, Chairman
North Pacific Fisheries Management Council
605 West 4th Avenue
Anchorage, AK 99501

Re: IR\IU proposal

Dear Chairman Lauber:

On behalf of the members of Fish Forever I write to express our concern with the proposed "improved retention -improved utilization" which is currently pending before you. As you are aware, Fish Forever has consistently promoted the reduction of bycatch, waste, and discards in U.S. commercial fisheries, particularly those prosecuted in the North Pacific and Bering Sea. We are certainly happy to see the Council addressing these problems but are concerned that the proposed IR\IU proposal would fail to ensure, or even promote, the reduction of the wasteful and destructive bycatch in the factory trawl fisheries of the North Pacific and Bering Sea.

Bycatch and discards in excess of 750 million pounds per year constitute more than a public relations problem. Efforts to reduce "bycatch" by simply redefining bycatch or by grinding up the bycatch and reducing it to meal and oil will not wash with the American public. The first priority of Regional Fishery Management Councils with regard to bycatch must be to reduce the bycatch, not to give it away, grind it up, call it something else or to deny that it is a problem.

Once there is a real and documented reduction in the amount of bycatch, then it would be reasonable to reduce, to the maximum extent practicable, the mortality of the bycatch. After those steps have been taken, a program to maximize the utilization of any remaining bycatch may be reasonable, but even then such a program would require observers on every tow and every discharge of offal from every vessel, scales to measure bycatch, and enforcement facilities and personnel.

The current process reauthorizing the Magnuson Act has emphasized reducing bycatch as a priority of U.S. fisheries management. As the primary co-sponsors of Senate Bill 39 pointed out during Commerce Committee deliberations on the bill; reducing the amounts of bycatch in all U.S. fisheries was the single problem which fishermen, consumers, conservationists and other witnesses raised most frequently during two years of public hearings. Among the few witnesses who denied that bycatch reduction is necessary in all U.S.

1111 Third Ave. #2507 Seattle, WA 98101 206-583-8385 Fax 206-583-8386

fisheries were some of the proponents of this IR\IU proposal who contended that bycatch was, at most, a public relations, not a conservation or ecosystem problem.

Once again factory trawl industry interests have proposed a management plan about which they will say: "every plan has winners and losers". Once again the factory trawl industry has proposed a plan in which they will be the winners and other gear groups will be the losers. Once again the factory trawl industry has proposed a plan which relies on voluntary actions and self-enforcement as a preemption of a similar but stronger and potentially effective plan which would have involved mandatory actions and objective enforcement.

If the distant water factory trawl fleet insists on a retention\utilization plan, Fish Forever encourages the North Pacific Fishery Management Council to create a pilot plan which (1) applies only to every gear group within the North Pacific fishing fleet which is responsible for at least 70% of the total bycatch in the North Pacific, (2) mandates documented reduction of bycatch amounts on an annual basis, (3) requires total weight measurement for all target and bycatch fish, (4) requires observer coverage of every tow brought aboard every vessel in the gear group, (5) requires retention, utilization and recordation of every fish, all the kelp and every other bit of material brought up in every tow by the vessel, and, (6) which guarantees prompt public disclosure of all data gathered during the pilot plan.

After such a three to five year pilot plan the Council would have sufficient data to determine the extent to which IR\IU would be likely to reduce bycatch. That determination, together with appropriate evaluation of the social, cultural and economic implications of IR\IU on other gear groups and other fisheries would aid the Council in deciding on the advisability of extending the pilot plan to other gear groups and other fisheries within its jurisdiction.

Until arrangements have been made to guarantee the inclusion of the six provisions set out above into an IR\IU plan, Fish Forever would encourage the Council to set aside the IR\IU proposal and return to developing a harvest preference type of bycatch reduction incentive program.

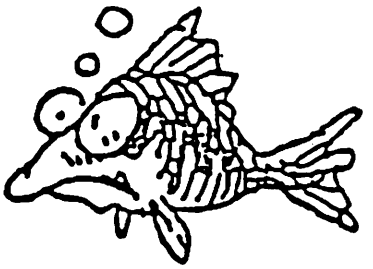
Thank you for your consideration of our comments.

Sincerely,

Fish Forever

by David L. Allison
Vice President

North
Pacific
Longline
Association



Agenda C-2

September 12, 1996

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK

RE: IR/IU

Dear Rick:

In our last written comments on this topic (April 13, 1996) we emphasized a number of unresolved complications and unintended results likely to flow from the IR/IU proposal. They included the lack of markets for products made from juvenile fish, difficulties of enforcement (the use of product recovery rates and volumetric catch estimations), complications involving directed fishing standards and PSC limits, insufficiency of observer coverage, and perhaps most important the possibility that the active public interest and environmental groups concerned about bycatch may not be satisfied with a program which focuses only on retention and utilization. While these difficulties have been discussed by the industry IR/IU committee, they have not been resolved.

We suggest that the current proposal be shelved (not abandoned) and that a direct attempt be made to reduce **bycatch** in our fisheries. To the extent that we can reduce unwanted mortality, we will not have to worry about retention and utilization. After bycatch is reduced as much as possible, we can look at means to improve retention and utilization of the bycatch we can't avoid. This sort of intellectual honesty is more likely to be appreciated by the environmentally-conscious public.

Background - Who Gets Hurt

If memory serves IR/IU was originally proposed by inshore processors, possibly with the idea of burdening offshore processors who lacked meal plants. The large offshore processors quickly realized that they, too, have meal plants, and attempted to co-opt the issue. As the smoke has cleared it has become apparent that only the smaller players - the head-and-gut factory trawlers and the longliners, who cannot add meal plants to their vessls - will be adversely affected. As one of the large players commented, "This won't slow us down a bit." In public testimony

4209 21st Avenue West, Suite 300, Seattle, Washington 98199
TEL: 206-282-4639; FAX: 206-282-4684

before the industry committee, some head-and-gut trawlers expressed genuine fear that the measure may put them out of business.

The Problem With the Problem

Throughout the industry committee discussions it has been stressed that there is no "biological" problem in our current levels of bycatch and discard since these mortalities are accounted for in TAC management. There is only a "perceived" problem in the minds of the environmentally - conscious public. It may be asked whether invocation of the majesty of federal regulation is appropriate for a question of "perception" or public relations. Also, we may be overreacting.

The Problem With the Problem Statement

The preamble to the problem statement asserts that the long-term health and productivity of our fish stocks should be assured by (1) reducing byctch, (2) minimizing waste, and (3) improving utilization. The specific measures listed, however, relate only to issues (2) and (3) - bycatch and discard loss, economic loss and waste associated with discards, instability through waste, the need for improved retention and utilization. No mention is made of reducing bycatch - or better, unwanted mortality - even though it is obvious that if bycatch were reduced there would no need to improve retention or utilization. Certainly the need would be reduced.

Impact on Fishing Practices

Some have have claimed that if vessels are obliged to retain small cod and pollock, they will avoid catching them. On the other hand it may be argued that the big players will have no incentive to avoid small fish - they will simply blow them through their meal plants, meeting their minimum utilization requirements with ease - "This won't slow us down a bit." Where the smaller trawlers are concerned, many argue that they are already doing everything they can to avoid small fish. There may be some marginal improvements to be made in these fisheries - greater retention of large pollock and cod, for example. But it is questionable whether fishing patterns and bycatch levels will be altered to any significant degree.

Public Perception

It would seem that it is the politically active environmental and public interest groups which should command our attention - they are running the ads and beating the tom-toms. They may have used the "waste" issue to attract the attention of the noninvolved public, but they are unlikely to be misled into thinking that improved retention and utilization resolve bycatch problems. The next generation of full-page ads could accuse us of duplicity.

A Suggested Solution - Reduce Bycatch

A more straightforward way of attacking the problem - whether it is a problem of perception or substance - would be to consider means to reduce bycatch of unwanted fish (or better mortality of unwanted fish, as fish can be killed in a fishery without being brought aboard). Rather than attempting a sweeping and simplistic single solution to a complex problem, we could scrutinize each fishery by gear type to see whether mortality of unwanted fish could be reduced through gear changes, fishing season changes, day or night fishing, gear deployment alternatives, slower towing speeds, etc. After doing this and reducing bycatch as much as possible, we could examine ways of retaining and utilizing the bycatch we can't avoid. In the course of so doing we could also assess carefully whether some players would be put out of business by the proposed measures - something we have not done to date.

If this more logical approach is not taken, we request that fixed gear operators be dropped from the proposal. As originally proposed, IR/IU was for trawlers only (EA/RIR, p.1). That is appropriate, as the vast majority of bycatch and discards take place in the trawl fisheries. Fixed gear operators have no meal plants, and no markets for small pollock and cod. What others turn to meal, they should be able to discard.

Another ameliorative approach would be to establish size limits for discards, allowing the discard of cod and pollock for which there are not markets. Please see letter from North Pacific Fishing, September 10, 1996, p.5.

Conclusion

Attacking the bycatch and discard "problem" from the bycatch end makes a lot more sense than does the current IR/IU proposal. This approach is far more likely to appeal to the environmentally-conscious public, which might see the current proposal as nothing more than a formula for business as usual. This approach does not obviate attempts to improve retention and utilization, which would be a logical second step in the process. However we proceed we should be far more careful to assess carefully the potential damage to existing fishing operations.

Thank you for your attention.

Sincerely,

Thorn

Thorn Smith

Hatchery Future up for Discussion

Why are taxpayers funding more fish?

by Bob Tiacz

Critics of Alaska's salmon hatchery system will have their chance to offer suggestions for the future of enhanced fish production at a series of meetings to be held in Anchorage. The Knowles administration hatchery policy group, an arm of the governor's "Salmon Industry Response Cabinet" will conduct the hearings in October.

Plans call for each consecutive day of the event to be devoted to comments by a specific segment of the industry or interest group concerned with hatchery management and production.

"What we're looking at is trying to get processors in on one day and hatchery operators in on another, then harvesters or harvester groups," said Martin Richards, director of the Division of Investments.

Richards is part of a three-member hatchery policy group that includes Bob Clasby, Commercial Fisheries Management Director, and Jim McMillan, recently named deputy director of credit for the Alaska Industrial Development & Export Authority.

Working under contract for the policy group is Oregon State University Professor Gilbert Sylvia, whom Richards called a nationally known resource economist. Gilbert's job is to review past studies and other hatchery documents to formulate "focus surveys for these meetings," Richards said.

Beyond segregating testimony by interest group, organizers will try to focus comments toward specific issues or questions.

"It's not just going to be an open forum; it's going to be more of a structured deal," Richards explained.

In addition to those invited to speak, the hearings will be open to any interested party. "Our effort is to make sure we invite the stakeholders of each of these groups," Richards stressed.

He noted, however, that two obvious issues will control the discussions: "The two major areas we're looking at are production and finances. There's a lot of depth to the finance question."

Money issues include the structure of the Investment Division's loan policy.

"Should we be more strict? Should we be more lenient? Should there be some kind of write-off of debt, a lowering of operators is a prime target for legislative or regulatory change.

The policy group was formed in response to growing, and in some cases long-standing, concern with the existing hatchery program. Yukon River and westward area harvesters complain that hatcheries are state subsidized competition. Board of Fisheries member Virgil Umphenour, who processes Yukon salmon, complained last fall that roe sales from his region in European markets were killed by Southeast hatchery competition.

Others, including officers of major processing companies, say hatcheries have outlived their usefulness in the current market system and should simply be shutdown.

"I've heard that rumor, too," Richards said.

Whatever the past complaints or suggestions; the purpose of the sessions is to get a handle on the future.

"The bottom line is our goal to provide some concrete recommendations to the Salmon Industry Response Cabinet by the end of the calendar year," Richards said. That schedule fits into the general time table for introduction of bills in the 1997 legislative session. □

Record Sockeye Bound for Stikine

Thanks to a successful sockeye enhancement program funded jointly by Alaska and Canada, a record number of sockeye have returned this year to the Stikine River. ADF&G's Brian Lynch predicts a catch of 400,000 to be shared between the two countries. ADF&G opened District 8 five days a week for the Alaskans to harvest their portion.

Lynch said "this is the largest return that we've ever had on the Stikine. It's a very, very good year. We've been restricting the catches in District 6 so as not to impact the island's stocks. Now that most of the Stikine stocks have passed by, we

Hatcheries Dump Half-million Chums

Roe-stripping charges run rampant

by Bob Tkacz

"Every dog has its day," the old saw goes. For chum salmon harvesters this season, the summer has been one dog day after another.

Who'd ever have thought the lowly dog salmon could wreak such havoc? The Southeast chum run of 1996 has become a plague of locust, plugging markets and bays, threatening financial and political fortunes, turning fishermen into lawbreakers and wasting tons of wholesome food.

It didn't come entirely without warning. United Southeast Alaska Gillnetters and United Fishermen of Alaska had cautioned the Alaska Department of Fish and Game that new regulations allowing only hatcheries to strip roe and dump carcasses would leave skippers without markets.

The rules said carcasses could only be dumped in wa[illegible]per than 100 fathoms while the boat

blamed major processors for the pressure. "We don't even need the Limited Entry Commission any more. These guys tell us when and where to fish."

Knowles' spokesman Bob King said the market, not his boss, was driving the events. He didn't feel the glut was an issue of processing capacity, but rather a case of economic necessity. King said there was "no reason" state processors couldn't handle the chum harvest, even if the run topped 10 million.

Department data through July 27 indicated 70 million pounds of chum had been delivered to processors in Southeast, 20 million pounds more than at the same time in 1995.

"The reason they are not moving is economic forces which are completely out of our control," King said.

As for processors—they blame the hatcheries.

"Hatcheries take over! That coul[illegible] headline," said Gary Moore, manag[illegible] of area, according to a skipper fishing for DIPAC on what he called a "go directly to go and dump" permit.

By August 1, Northern Southeast Aquaculture Association had dumped about one million pounds of fish.

According to ADF&G legislative liaison Geron Bruce, Southern Southeast had just begun to dispose of chums, "as sort of a backup option."

Fishermen who weren't roe fishing for hatcheries were under trip limits that began around 10,000 pounds, depending on the processor. In some cases the limits had shrunk to 3,000 pounds before the end of July. As a result, fishermen had to devise new ways not to catch salmon.

Boats began fishing with half a net or less. Soak time was reduced to as little as 10 minutes. Despite these tactics, several nets were sunk by the weight of their catches and lost in Stephens Passage.

Norm Hughes, skipper of the F/V *Chilkat*, said he had to attached six to keep his chum-packed net from sinking while doing cleanup fishing for DIPAC in Boat Harbor, off Lynn Canal. Only the buoy remained above water.

So, were hatcheries the only ones stripping roe and wasting fish?

Some fishermen claimed that tenders were directing them to catch "only females."

Leon Woodrow said a room full of gillnetters got directions to dump male fish at a July 20 meeting with Ward Cove buyers. It's a charge that the company denies.

"I haven't told fishermen anything like that. If that's what they've been told, it's not from me," said Excursion's Gary Moore.

The only direction he has issued, on a printed flyer, was to use best judgement.

"I said bring the better quality fish," Moore clarified. "People are doing all kinds of different things out there that I have no idea of."

Fishermen in Taku I[illegible] said the area was full of "flying fish [illegible]ng mid-July

fathom's while the boat was moving at least three knots

would leave skippers without markets. They predicted that it would also leave decaying fish in the water and waste their enhancement tax dollars right along with the protein.

It just astounds me that the department was so steadfast all winter long and spring as this issue was laid out," said Dave Nanney. He and six other Haines fishermen formed their own company, Rainbow Glacier Seafoods, in one of many desperate attempts to find markets and financial survival.

Rainbow's shareholder fleet emphasized quality and handled their chums the way trollers do chinook. As a result, they found markets for fresh fish and trucked them as far off as Oklahoma.

"We actually have way more offers of sales of fish than we have fish in our small group," Nanney said in mid-July. "We can't even remotely fill the orders we've got."

Moving the inexpensive fish was also the key to accessing the more lucrative roe market. Nanney realized other fishermen weren't as fortunate and said, "I think [ADF&G] bears a tremendous burden for what's going on right now."

Juneau gillnetter Leon Woodrow, a partner in Northern Keta Caviar Company, said the problem was more than bad planning; it was bad politics.

"Knowles handed over the resource lock, stock and barrel to his contributors," Woodrow charged, emphasizing that he

"Hatcheries take over! That could be a headline," said Gary Moore, manager of the Ward Cove Packing plant at Excursion Inlet. "Hatcheries have come into their own in a big way. They pretty much dominated all the commercial harvest in northern Southeast."

The projected run of 10 million chums hit 7.5 million before the end of July and was coasting to a new record that could top 20 million, according to Karl Hofmeister, Department of Fish and Game pink and chum research biologist.

What's worse in this upside down world of market gluts is that the fish were averaging 10 pounds, 20-percent larger than normal. In effect, for every five fish caught you got one more for free, and unless fishermen could find some way to sell the flesh, the profitable roe was worthless, too.

The only thing that kept up with the chum run was the rate of dumping by hatcheries.

Based on an average of 10 pounds per fish, ADF&G data as of August 1 indicated that Douglas Island Pink and Chum had dumped 100,000 round fish before it was able to set up a roe recovery operation.

"Literally just perforate them and dump them," said department biologist Herman Savikko.

Another 450,000 were roe-stripped and then dumped under Department of Environmental Conservation guidelines. The rules said carcasses could only be dumped in water deeper than 100 fathoms while the boat was moving at least three knots. And then only one dump per

Norm Hughes, skipper of the F/V *Chilkat*, said he had to attached six empty roe buckets and an extra buoy bag

Fishermen in Taku Inlet said the are was full of "flying fish" during mid-Jul

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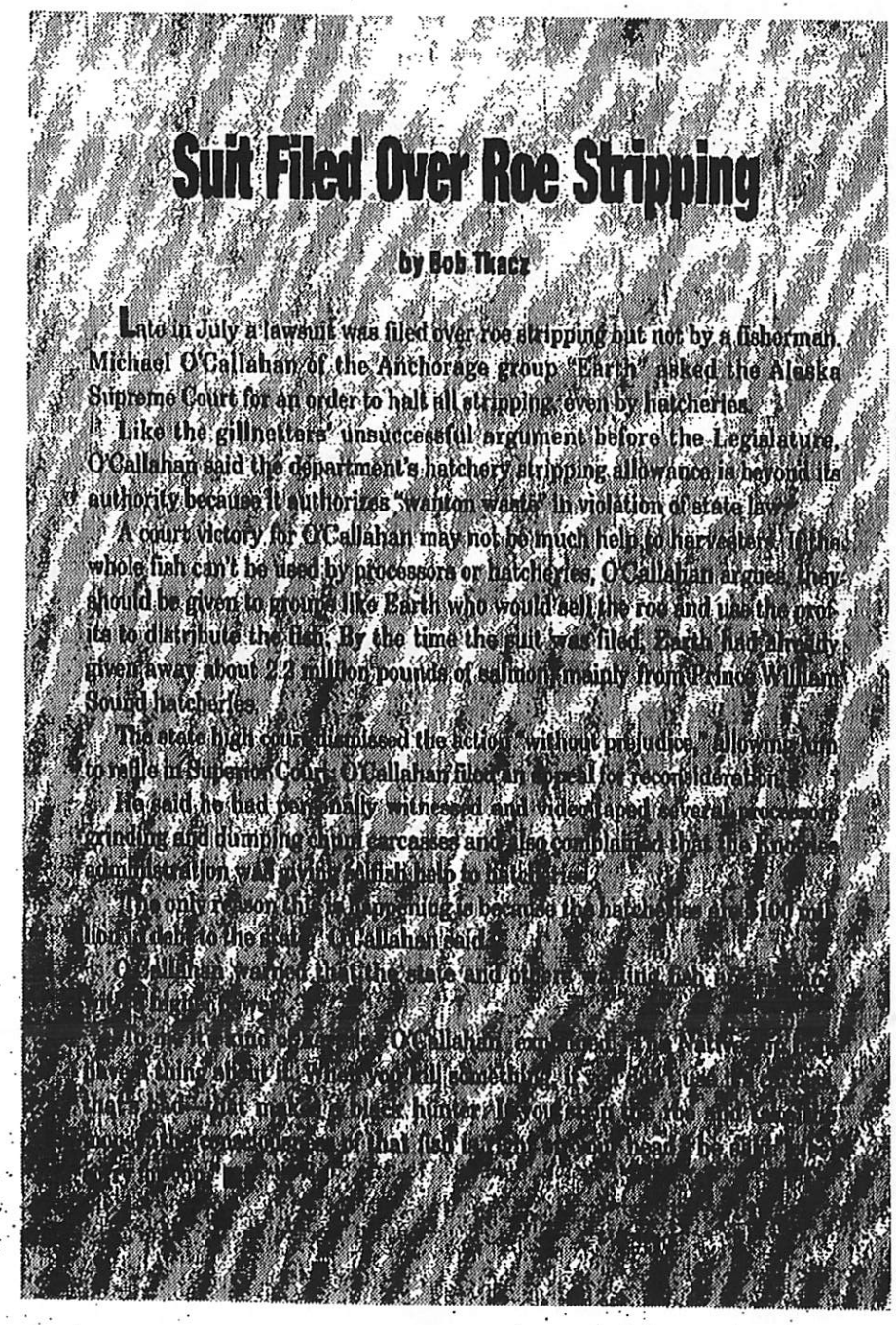


Suit Filed Over Roe Stripping

by Bob Tkacz

Late in July a lawsuit was filed over roe stripping but not by a fisherman. Michael O'Callahan of the Anchorage group "Earth" asked the Alaska Supreme Court for an order to halt all stripping, even by hatcheries.

Like the gillnetters' unsuccessful argument before the Legislature, O'Callahan said the department's hatchery stripping allowance is beyond its authority because it authorizes "wanton waste" in violation of state law.

A court victory for O'Callahan may not be much help to harvesters. If the whole fish can't be used by processors or hatcheries, O'Callahan argues, they should be given to groups like Earth who would sell the roe and use the profits to distribute the fish. By the time the suit was filed, Earth had already given away about 2.2 million pounds of salmon, mainly from Prince William Sound hatcheries.

The state high court dismissed the action "without prejudice," allowing him to refile in Superior Court. O'Callahan filed an appeal for reconsideration.

He said he had personally witnessed and videotaped several processors grinding and dumping chum carcasses and also complained that the Knowles administration was giving salmon fish to hatcheries.

"The only reason this is happening is because the hatcheries give $100 per [illegible] dollar to the governor," O'Callahan said.

O'Callahan [illegible] the state and others [illegible]

[illegible] O'Callahan [illegible]

[illegible] something [illegible]

[illegible] black humor [illegible]

Hatcheries Dump

continued from page 10

gillnet openings.

"People were throwing them back blatantly," said Hughes on the *Chilkat*. "A lot of people doing roe processing are doing what they call catch-and-release: if you catch a male they're releasing them as quick as they can."

In a May 30 letter gillnetters threatened Fish and Game Commissioner Frank Rue with a lawsuit over the hatchery-only stripping regulation. Overtaken by the season's arrival, as well as the potential cost of legal action, harvesters dropped the suit idea. Instead, they decided they could test their case when the first gillnet catcher/processor was busted under the new rule. The fish cops apparently weren't cooperating.

"I don't think they're going to touch this with a ten foot pole," said Woodrow, who claimed Fish and Wildlife Protection were "noticeably absent this year" in northern Southeast.

Enforcement officials deny there's a tolerance policy toward wanton waste of chums.

"If we find somebody doing that, we will take the appropriate action," said enforcement director Col. John Glass. "If we hear some good information we're going to pursue that. If they tell me a processor in some bay is dumping some chum overboard, we're going to go look for that."

Despite the widely circulating stories, Glass added, "I don't know of any hot information we're pursing at this point in time."

Geron Bruce was not alarmed either.

"Companies definitely are quality conscious," he said when asked to comment on allegations that processors told fishermen to catch females only.

"Most of the time it's all so vagu there's not anything anybody can do, bu certainly people are looking for it," Bruc said, adding that "a few situations" hav been referred to fisheries enforcement.

Bruce offered some advice to fishermer "When it comes to releasing live fish bac into the water," he said, "we're encouragin people to do that. That's an acceptabl activity, but we do draw the line at dea fish." Bruce added, however, "Once the fis are gone, there's no evidence." □

TO: NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

9/20/96

RE: C-2 IR/IU

#1 I WOULD LIKE TO KNOW WHAT HAS TO HAPPEN TO WHICH SPECIES OF FISH BEFORE THE COUNCIL OUTLAWS TRAWL AS AN OPTION TO HARVESTING FISH. HOPEFULLY, YOU DO KNOW THE ANSWER.

#2. WHAT ARE THE "SAFETY NETS" BUILT IN TO YOUR SOLUTIONS FOR BYCATCH AND, WILL THESE GUIDELINES HELP YOU ERR ON THE SIDE OF CONSERVATION?

I REGRET I AM NOT ABLE TO ASK YOU THESE QUESTIONS IN PERSON AS THE SIGN UP LIST WAS CLOSED YESTERDAY FOR TESTIMONY. I HAVE LONGLINED ON A 56' BOAT OUT OF SITKA FOR 6 YEARS & HAVE EXPERIENCED MUCH ANGUISH OVER OUR BYCATCH !! SO, IN COMPARISON TO A TRAWL VESSEL....

I WOULD GREATLY APPRECIATE A RESPONSE

THANK YOU - Claire Johnson

CLAIRE JOHNSON
C/O PO BOX 6384
SITKA ALASKA

Mike Hyde
C-2

1994 & 1995 Trawl Pollock Discard Data (mt x 1000)							
source: NMFS EARIR & Dr. Quierolo's supplemental data runs as per AP data request							
1994							
total trawl pollock discard 1994=			85.1				
<125 ft		125-159 ft		> 159 ft			
1.9		6.3		76.9			
2.23%		7.40%		90.36%			
1995							
total trawl pollock discard 1994=			80.6				
<125 ft		125-159 ft		> 159 ft			
3.1		7.5		70			
3.85%		9.31%		86.85%			
H&G Trawl Proposal							
cod- immediate 100% retention							
rocksole & yellowfin sole-			100 % retention after 5 years				
pollock-	100% retention on the following schedule:						
<125		125-159		160-195		>195	
in 5 years		in 3 years		in 1 year		immediate	

1994 & 1995 Pollock Discard Data (mt x 1000): All Catcher Processors							
source: NMFS EARIR & Dr. Quierolo's supplemental data runs as per AP data request							
1994							
total trawl pollock discard 1994=			87.7				
<125 ft		125-159 ft		> 159 ft			
2.2		8.1		77.4			
2.51%		9.24%		88.26%			
1995							
total trawl pollock discard 1994=			93.3				
<125 ft		125-159 ft		> 159 ft			
3.3		9.3		80.7			
3.54%		9.97%		86.50%			

Fishermen's Finest

North Pacific Fishing, Inc.

4039 21st Ave. W. #201 ▪ Seattle, WA 98199
TEL: (206) 283-1137 ▪ FAX: (206) 281-8681

September 10, 1996

Richard B. Lauber, Chairman
North Pacific Fisheries Management Council
605 West 4th Avenue
Anchorage, AK 99501

RE: IR/IU Agenda Item C-2

Dear Chairman Lauber:

As you are aware I own and manage the *F/V American No. 1* and *F/V Pathfinder,* two head & gut (H&G) catcher-processor vessels, one a trawler, and the other a freezer-longliner. Both vessels operate in the federally managed fisheries of the Bering Sea. Both of these vessels stand to be adversely affected by the current IR/IU proposal before the council. The irony of this is that the current proposal, which is the result of an effort by large inshore and offshore processors to gain political or economic advantage through the regulatory process, stands to hurt a small offshore fleet that does not compete in a significant way with these large entities, and to hurt small onshore processing plant operators.

The current proposal will adversely effect our longline operation by reducing an already tight profit margin. This will tend to diminish the commercial advantage of operating in the conservation-oriented longline fishery. The trawl vessel will be affected by reducing its ability to make productive economic use of the large quota of low value species which are generally not usable by shoreside operations. Other than diminishing the viability of the head and gut (H&G) fleet and small shore plant operators, the IR/IU proposal will result in nothing more than increased meal production by large shoreside and offshore processing operations.

Standing against the current proposal are NOAA General Council opinions that it is untenable, NMFS Enforcement statements that it may be as enforceable as the Vessel Incentive Program, and reasonable inferences from the NMFS/NPFMC staff analysis that it will not have any beneficial effect on the environment but will have a negative economic impact on small and mid-sized entities. Standing for the proposal is the tenuous political calculation that the IR/IU program would end our fleet's public image problems. I strongly assert that the industry is wearing rose colored glasses if it thinks that Greenpeace and its associates are going to be fooled by a program that merely decreases waste on the books by creating large amounts of valueless fish meal while handing the fishing industry over to big business.

Any realistic IR/IU plan will need to encourage the utilization of marketable fish, without penalizing the discard of unmarketable fish. Since the most effective enforcement mechanism will be the presence of an observer on the vessel which will encourage adherence to whatever plan is

implemented by NMFS and the Council, all other enforcement mechanisms will be window dressing. Therefore, the Council need not be bound by arguments that the IR/IU system must be all or nothing and cannot be reasonably tailored to provide realistic results.

Hopefully the Council has learned from its Halibut-Sablefish IFQ endeavor that the unintended consequences of what seems to be a good idea are not necessarily seen until the Council has passed the point of no return. I suggest that the current IR/IU proposal stands to have the same effect on small operators in Alaska as the IFQ program had. Unfortunately, the IR/IU plan promises no fisheries management benefits in return.

Specific comments follow.

1. The plan does not answer the Council's problem statement items 1, 2, 3 and probably would not solve item 4.

Item 1: The current proposal does nothing to reduce the waste of crab, herring, salmon, or halibut, it encourages the continued 100% discard of these species.

Item 2: The current plan encourages continued economic loss and waste by: 1) allowing the fish that are currently discarded be turned into meal, and 2) encouraging the use of resources to produce products worth less than the cost of production.

Item 3: Of the industry sectors operating in the North Pacific, only the pollock and crab fleets lack a long-term stable fisheries based economy as a result of limited stocks. This plan does nothing to reduce the waste of crab in the directed crab fisheries which waste as much as 90% of their harvest. (e.g.: the Bering Sea King Crab fishery, *See A Global Assessment of Fisheries Bycatch and Discards*, United Nations FAO Technical Paper 339, (1994), page 27.) With regard to pollock, this plan will simply encourage more meal production rather than significantly increase the supply of pollock available for surimi and fillet production.

Item 4: This plan as currently constructed will most likely result in a decrease of long-term economic benefits to the nation (EA/RIR, 7/1/96, pages 8-17) while failing to provide any conservation or positive environmental impact. (EA/RIR, pages 8-17)

2. The EA/RIR does not calculate net economic benefits. The net economic benefit to the nation of imposing a minimum size standard would exceed the net economic benefit of imposing the current proposal.

At its July 1996 meeting, the Scientific and Statistical Committee discussion stated that it anticipated that as a result of increased production costs and lost fisheries imposed by the proposed plan, the net economic benefit to the nation would likely be zero or less. The EA/RIR clearly only focuses on gross benefits *before costs*, not net benefits. (*See e.g.* EA/RIR, page 78 and 85.) The analysis provides no direct quantitative evidence of net effects of the plan.

Most of the benefit to the nation of an IR/IU plan would flow (if at all) from retaining fish over a minimum marketable size as this would increase the retention of valuable species without requiring the production of product with a low or negative value. <u>For plants without meal capacity, the IR/IU Option 2 (favoring retention for human consumption), will likely be the</u>

realistic effect of the IR/IU plan, even if Option 1 is selected. This is because most smaller plants produce primarily for human consumption. IR/IU Option 1 then will most likely have the same effect on at-sea H&G vessels and shoreside Pacific cod and Greenland turbot fisheries as Option 2. (*See* EA/RIR, pages 94 & 95.)

This results in a marked drop in net economic value to the nation of the IR/IU plan. By adopting a minimum size standard, the Council would increase the net benefit to the nation, and reduce real waste, rather than encourage the waste of fuel and other resources producing valueless or negative valued product.

3. The EA/RIR inaccurately compares the net cost of retention for human consumption and gross cost of retention for any purpose.

The discussion above points out a disturbing flaw in the NMFS/NPFMC analysis. Specifically, the analysis of retention option 1 calculates gross benefits to the nation without considering the cost of foregone fisheries, while analysis of option 2 takes into account the cost of fisheries foregone by limiting meal production. This was done by simply noting that staff cannot calculate who will be forced out of the industry under option 1 while staff can make a guess at what will happen under option 2. This justification ignores the fact that the result is an "apples and oranges" comparison which hides the effect of the IR/IU program on smaller entities. The Analysis makes copious note of this problem in footnotes and comments, For example, with respect to the trawl cod fishery, the EA/RIR states:

> **[O]ption [1] will impose significant operation costs on this fishery . . . . which probably cannot be offset (in whole or in part) by the sale of the additional catch.**
> (EA/RIR, page 30)

However, the analysis provides the decision makers with *no quantitative analysis of that cost.*

4. The Council has wide flexibility to craft a retention program that will realistically reduce waste with essentially the same level of enforceability of the proposed program.

Enforcement of *any* IR/IU program will be difficult. (EA/RIR, page 121.) The Council is relying on adherence to the IR/IU program by its mere presence, and not as a result of its ease of enforcement. Compliance with any IR/IU program will result more from the risk of detection and potential impact of violation rather than the likelihood of enforcement.

> **The *risk* of detection of violations of the IU requirement is expected to provide a sufficient disincentive to achieve an acceptable level of compliance.**
> (EA/RIR, page 122, emphasis in original)

Therefore, the Council has wide flexibility to craft a retention program that will realistically reduce waste and still achieve the same level of enforcement by deterrence as would be achievable under the current proposal.

As Mr. Pennoyer has pointed out, we do not have the resources to put an observer on every overboard discharge. For vessels with an observer onboard, compliance will result from the ever-present chance that an observer may be present at any given location without predictability. It would be unlikely that a vessel owner would risk seizure of a vessel or an enormous fine on a complex program of training the crew to discard fish when the observer is not present and retain fish when the observer is present. A vessel carrying an observer will necessarily follow the retention program at all times.

Vessels will continue to be permitted to discard non-covered species without restriction. This means that a minimum size retention standard is effectively just as enforceable as a 100% retention of any covered species standard. It is therefore irrational to choose not to implement a minimum size retention standard simply because it is difficult to enforce. Such a decision would require the dismissal of the entire plan.

5. If additional observers must be deployed, they would be best deployed on vessels that otherwise would carry no observers.

As discussed above, the mere presence of an observer on a vessel is the most likely motivating force to assure compliance with any IR/IU program. In the words of Captain Anderson representing the U.S. Coast Guard at the April 1996 Council meeting:

> **"If you have an observer onboard a vessel (or at a plant), while perhaps not officially tied to this (IR/IU) program, he or she is present and walking around.**
> (EA/RIR, page 122.)

The IR/IU committee has chosen to ignore the option of putting a single observer on as many vessels as possible and instead to focus on either present coverage or doubling observer coverage on vessels that already have observers. This second choice would produce a severely limited benefit at a great cost.

However, for the same cost, NMFS can place one observer on every vessel in the fleet. For example, according to the EA/RIR, in 1995, 38 catcher/processors and 24 large catcher vessels participated in the pelagic pollock fishery while 119 partially or unobserved catcher boats participated. Under current coverage standards this means that about 92 observers (62 vessels at 100% plus 103 vessels at 30%) were deployed at any given time during the 1994 pollock fishery. Therefore, more additional observers would needed to deployed double observer coverage than would be needed to provide one observer to 100% of the pollock fleet. Similar results would apply to the Pacific cod fleet that engages fewer unobserved vessels. (EA/RIR pages 26-32, and table on page 46.)

Of course, the committee has already determined that it is impossible to deploy additional observers. Nonetheless, if increased observer coverage is deemed necessary, placing an observer

on each participating vessel is the most effective course of action and can be managed with the same increase in personnel.

6. Forcing the retention of fish below a marketable size would place substandard product on the international market and reduce American competitiveness for all of our products.

The current IR/IU plan will result in operators selling ocean run frozen product on the market. It is unavoidable that the sale of this product will to some extent brand all produce of the fisheries off of Alaska as substandard. Domestic and international markets develop slowly over long periods of time and require the trust of buyers. The current proposal threatens the ability of operators to continue building that trust by threatening to dump low quality products on the market. Buyers will likely reply to the increased uncertainty of product quality by lowering prices across the board.

7. The problem of reducing waste is purely an economic problem and not an environmental or conservation one.

According to section 2 of the EA/RIR, there is no environmental benefit realized by choosing to implement the IR/IU plan. A review of NMFS stock assessments show that fishing vessel operators take only a small portion of the biomass of each species* .

Species:	1995 Exploitation rate:
Pacific Cod:	15%
Pollock:	14%
Rock Sole:	2%
Yellowfin Sole:	5%

This Council is dealing with a purely political issue of waste. The appropriate action should be to reduce waste of fish, not to condone the waste of fish by implementing regulations that turn that fish into valueless material that costs more to produce than it could possibly be marketed for.

8. A minimum size standard applied to the IR/IU proposal would make this an effective program for reducing waste.

The analysis itself bases its cost/benefit calculations on a set of minimum marketable sizes (EA/RIR, pages 126 - 127):

Species:	Weight:	Length:
Pacific cod	900 -1,360 grams	47 cm
Pollock	350 - 450 grams	40 cm
Rocksole	300 grams	29 cm
Yellowfin Sole	260 grams	28 cm

* NPFMC Document, November 1995 and NMFS OPUS database, January 1996. Attached charts from Natural Resource Consultabnts *1996 Annual Report,*

While these sizes would still place great constraints on both the fleet and shoreside plants as well as on our industry's current markets,** they are an independent assessment that can serve as a basis for a minimum size standard above which the IR/IU program would apply.

As discussed above, the enforceability of such a program would be roughly the same as the current proposal; it would eliminate the waste of marketable fish; and it would not destroy entire sectors of the industry.

Conclusion:

Sending 750,000,000 lbs. (ADF&G estimate) of fish into meal plants to create an inedible product is not going to place food on the tables of American citizens. If the Council's goal is to reduce waste, the wise course is for the Council to create a program that encourages the retention of edible food fish, not a program that encourages edible fish to be processed into non-edible meal. The Council is relying on the IR/IU program to be enforced by the fear of being caught. After accepting this argument, the Council should not simultaneously ignore it by saying that a minimum size is unenforceable and allow large operators to seek a competitive advantage over small operators simply because they can hide their edible discards by turning it into meal that is not fit for human consumption.

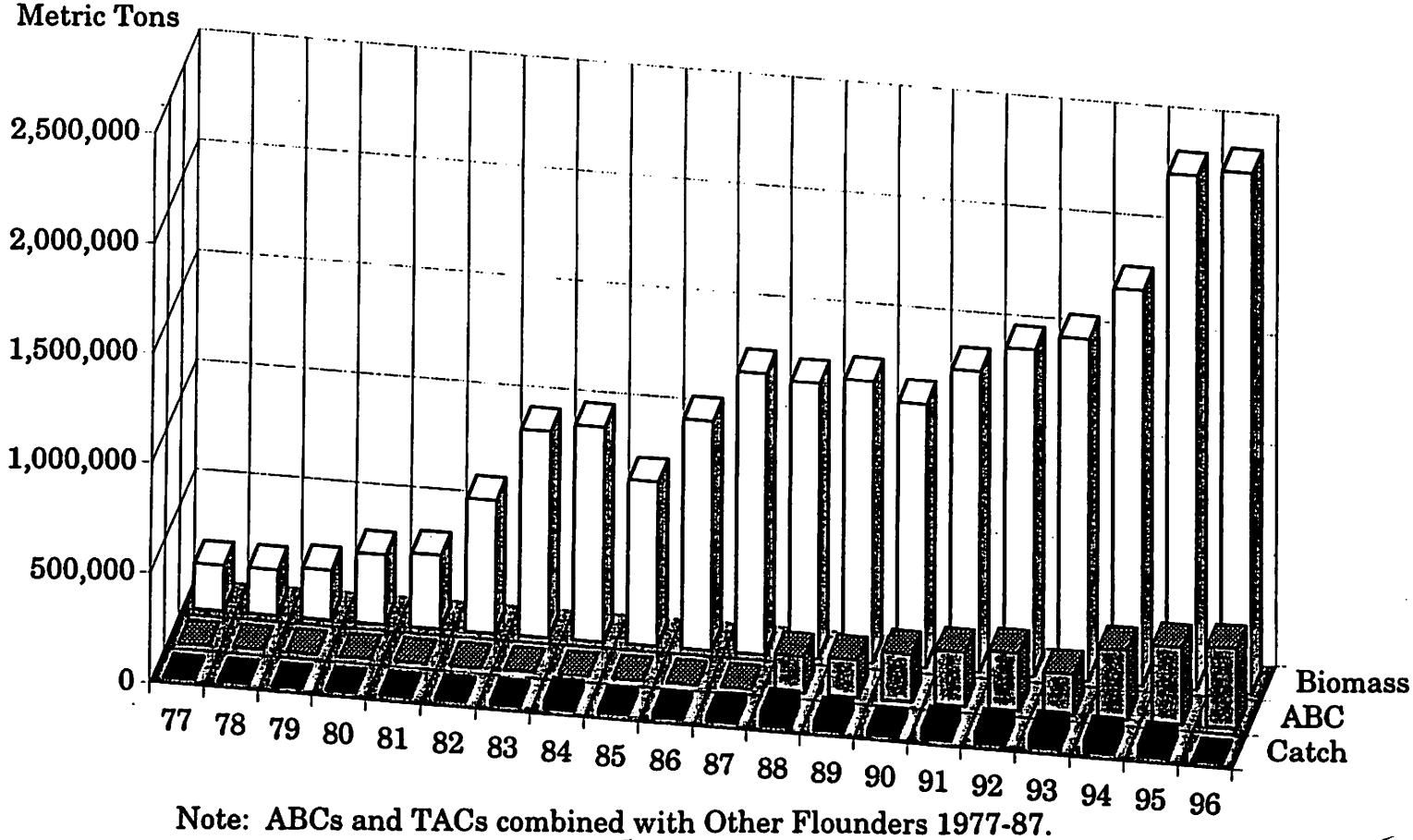
Sincerely,

Rudy A. Petersen

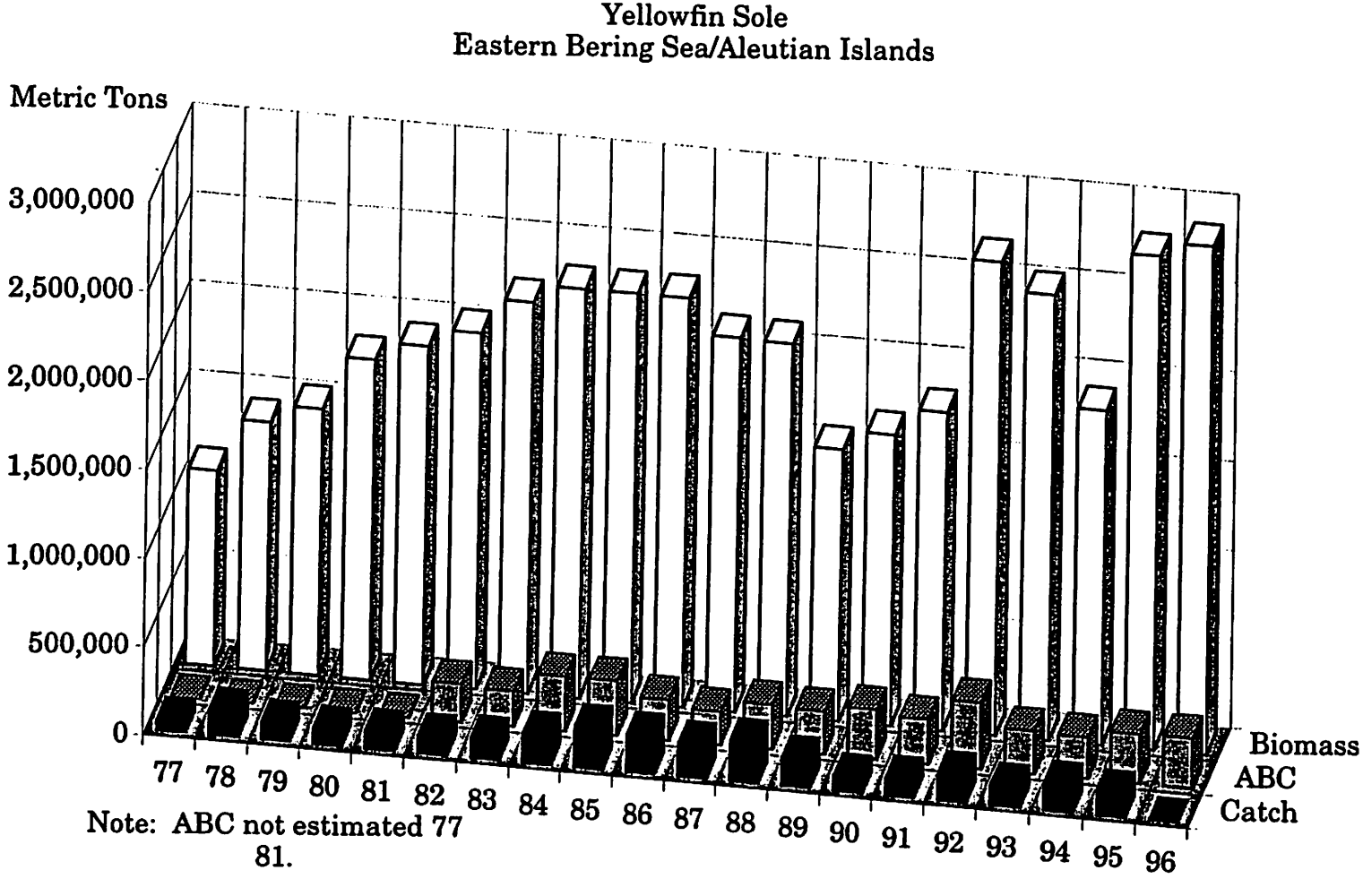
Rudy A. Petersen

** For example, this includes a great deal of cod under the 6 lb. size necessary to receive full price for catcher-vessel deliveries this summer.

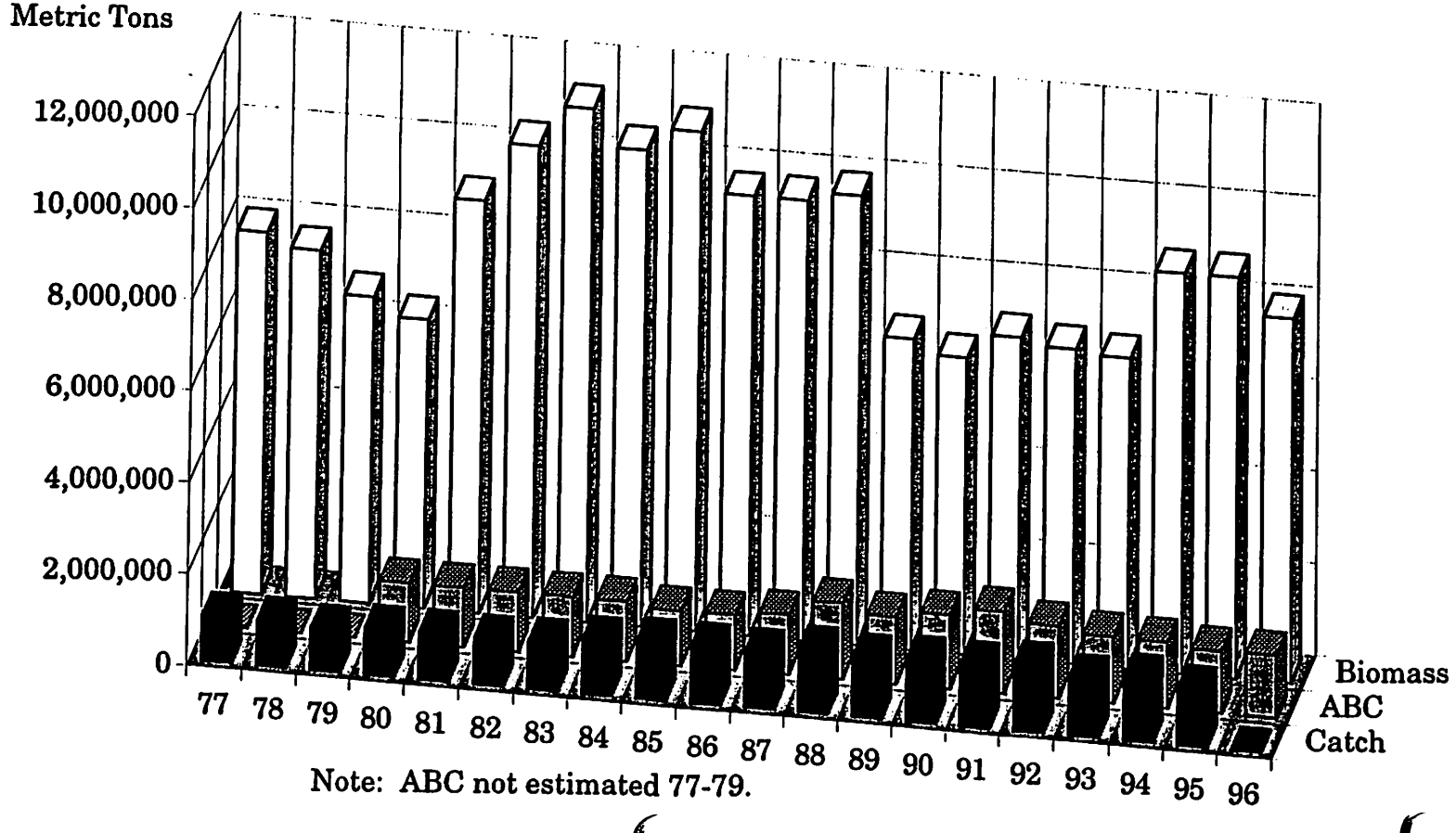
Rock Sole
Eastern Bering Sea/Aleutian Islands



Note: ABCs and TACs combined with Other Flounders 1977-87.

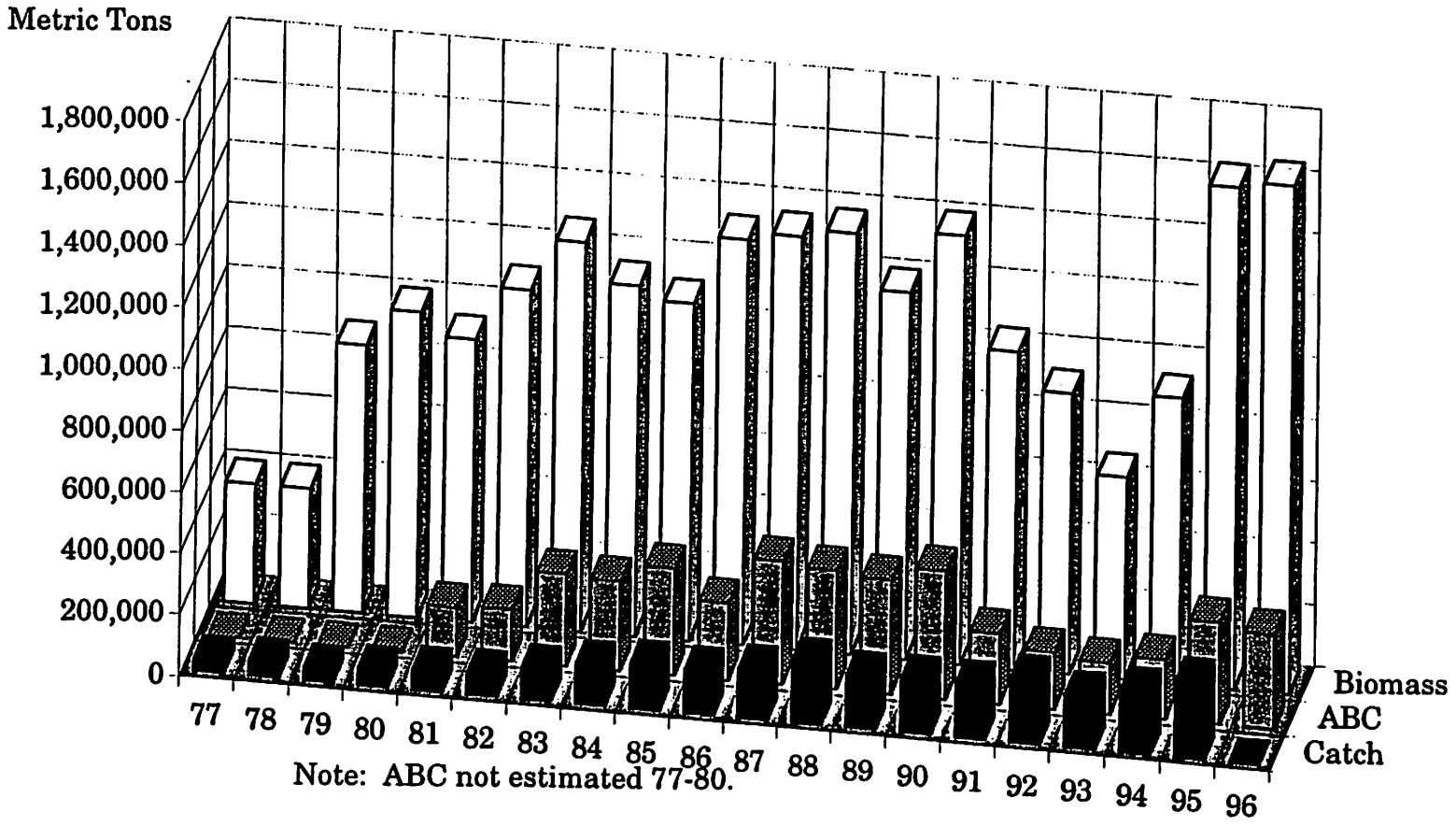

Yellowfin Sole
Eastern Bering Sea/Aleutian Islands
Metric Tons
3,000,000
2,500,000
2,000,000
1,500,000
1,000,000
500,000
0
77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96
Biomass
ABC
Catch
Note: ABC not estimated 77 81.

Pollock
Eastern Bering Sea/Aleutian Islands



Note: ABC not estimated 77-79.

Pacific Cod
Eastern Bering Sea/Aleutian Islands



Note: ABC not estimated 77-80.

Transcription
Improved Retention/Improved Utilization
Agenda item C-2; September 20, 1996
Council questions of staff and discussion/action.

September 20, 1996

Tape 32

Rick Lauber: O.K., Chris (Oliver), you've heard some of the testimony and there were some issues that came up and, Dr. Queirolo, that you might like to fill in some of the blanks, particularly I understand on product recovery rates and how that would be handled. Can you help us out with that, please?

Lew Queirolo: I hope, so, Mr. Chairman. As I indicated when we testified on this issue yesterday, under IU Option 1 and IR Option 2, the compliance test is a necessary and sufficient two-part test so that compliance with IR in the absence of compliance with IU is a violation which can be pursued and prosecuted. Compliance with IU in the absence of compliance with IR is also a violation which can be pursued and prosecuted. The confusion, I think, lies in the misinterpretation of the 15% minimum product recovery rate and its application to the IU portion, the utilization portion, of the test. The product recovery rate that will be the basis for judging compliance will be those rates which are fixed to each of the product forms and if you turn in the document to pages 88-89, listed there are on 88 a range of product recovery rates for each of the primary, ancillary and industrial products, and on 89 is the NMFS published standard point estimates of those PRRs. I have heard some suggestion that, for example, a boat could do H&G cod product, recover 15% product recovery rate and be in compliance because the minimum PRR is 15. That is incorrect. If you go to the table on page 88, H&G western cut would require at least 50% recovery rate, eastern cut at least 32%, H&G tail removed at least 44%; those are the PRRs that would prevail when you were boarded if you had H&G in your hold, not 15%. The 15% threshold applies to operations doing deep-skin fillets, and the argument in the IR/IU working group session was, as this table indicates, deep skin fillets have a PRR of as low as 13%. Collectively the group concluded that that simply wasn't adequate performance, even if you're producing that high valued, domestically marketed product. They wanted at least 15% recovery. Which means, a deep skin fillet operator getting 13% recovery for his primary product would be required to produce some ancillary product which would bring the aggregate performance at least to the 15% level. That doesn't bear on surimi boats or H&G boats or any of the other operations because those vessels would have to comply with the prevailing PRR for the product forms that they were putting up. We have three examples I can step you through if you'd like, Mr. Chairman, that demonstrate the necessary and sufficient tests and how those would be judged by a boarding officer, if that would be helpful.

Lauber: Go ahead.

Queirolo: Again, please refer in the book to page 88 for the relevant PRRs. [Using overheads] In case 1, in this example, we have a boat which has 100 mt of round weight catch, in this case, P. cod. It produced H&G western cuts and had 40 mt of H&G western cut product in the hold. It also produced fillets with rib, no skin, and had 7.5 mt of that product in its hold. It also produced bellies, and had 1 ton of bellies in its hold. When it is boarded by an enforcement officer, the IR test is as follows: The officer goes to the bridge, confirms that there's 100 tons round weight reported catch in the fishing log. Another officer is in the hold, looks at the 40 mt of product in the H&G, takes the prevailing product recovery rate of 57% and back-casts that. Incidentally, that's 70 mt of round weight equivalent; takes 7.5 mt of fillets with ribs, no skin, for which a prevailing PRR is 25% recovery; does some division and discovers that there are 30 mt of round weight equivalent in product form in fillets with ribs, no skin, 70 tons, and 30 tons of primary product come to 100 tons round weight; they have met the retention requirement test. They then examine the utilization test. In this case they have a PRR of 57% . . . on fillet with ribs, 25%, and a 1% recovery on bellies. Based on these product weights, they are in excess of the 15%

threshold. They pass the IU test. They are now in compliance with both the IR and the IU, so they have the necessary and sufficient performance to be in total compliance with this requirement.

Case number 2: It's a vessel that has 100 tons round weight catch of pollock. They produce fillets, deep skin. In this case, they have 13 tons of deep skin fillets in the hold. The PRR in this case is 13%. If you divide 13 tons by 13% you get 100 tons round weight. This boat is in compliance with the retention requirement. Next test is, do they have at least a 15% or better performance rate on PRRs for utilization? They do not. They fail the utilization test and they are subject to a violation certification here. The committee's suggestion in this case is that this operator would be required to attain at least 2% recovery additional in some ancillary product form and the list that you have in front of you on page 88 describes which products are regarded as primary and which are regarded as ancillary. So, for a deep-skin boat getting 13% product recovery, they could put up chins or they could put up belly flaps or they could put up cheeks, something that would get them up to that minimum 15% threshold. These guys would make it on IR, fail on IU.

Case number 3: Again, this boat has 100 mt round rate P. cod. It produces H&G western cuts; he has 30 tons in the hold. He produces bellies; he has 1 ton; chins, 5 mt; heads 15 mt. When the officer boards he confirms 100 mt of round weight product, goes to the hold and examines the primary products that are in the hold, and the only primary product that this operator has put up is H&G, which has a 57% product recovery rate requirement. If you back-cast 57%, divide 30 tons, you come up with 52 tons; this boat fails IR. He is not in compliance; he has apparently thrown away round fish and he is subject to an enforcement action. You come back to the hold, he nonetheless has met the IU component because the aggregate performance exceeds 15%. But that's academic, because he's busted in IR. He failed to keep all the fish so he's in violation of the retention requirement. Separate from and no mitigating influence on having passed the IU test.

So, Mr. Chairman, those are the three possibilities. Each boat is tested both on the retention and the utilization component. Unless they're in compliance with both simultaneously you have a violation. The 15% really is most relative for the deep skin operator who is being asked by the proposal to ratchet that recovery up to at least 15%. Fifteen percent is irrelevant for all other product forms because as you look down your primary product list none of them are below the 15% threshold.

Lauber: Lew, You heard the comments by one of the people testifying regarding grinding, or something of that nature. How would that factor in? It seems odd to me that there would be an ambiguity. Maybe you could clarify that for us.

Queirolo: Mr. Chairman, I'm in agreement with you. I don't think there is an ambiguity. If you grind and pump whole fish, you don't have product on board which the enforcement officer could verify compliance with the utilization test. You have not accounted for all of the round fish in terms of the product on board since ground waste has no product recovery rate, is not a product, and therefore you're busted.

Wally Pereyra: Dr. Queirolo, a couple of questions. One very usable product that can be derived from a deep skin operation is to take the frames and run them through a meat separator and recover a mince, and that would possibly get them above the 13%. Now, I notice that mince is not listed as an ancillary product. Why is that? That's certainly a very valuable product.

Queirolo: They need not need make an ancillary product. They may make only a series of primary products and still be in compliance. I may have mis-spoken and said they must make an ancillary product. They must make some other product from the balance to get up to or greater than the 15%. So, there's no prohibition on them making mince out of that.

Pereyra: No, but they don't get credit for it.

Queirolo: Yes, they do get credit for it.

Pereyra: Where?

Queirolo: It's in the utilization. They look at all of their product forms. It's just like . . .it's exactly like option 1 where they have both H&G and fillets and they get credit for both of those. In the little exercise that I went through. . .

Pereyra: Oh, I see, so the mince part would come out of the 15%?

Queirolo: Right, that's the PRR that, well, no. . .I'm sorry. The mince is 22 to 50%, depending on whether you're picking frames or . . .

Pereyra: That's absurd. Because, the mince, you're only going to get a few percentage off it, if it's done as a product associated with a fillet operation.

Lauber: . . .Steve Meyer, we're finally going to let you talk here. Go ahead.

Steve Meyer: Mince can be a primary product or an ancillary product. If somebody chose to put whole round fish to mince, it's figured at a 15% product recovery rate. If it was an ancillary product, it would be a lower product recovery rate but because it's ancillary it comes into this added up . . . on the ancillary side, so there is a separation between primary mince and ancillary mince.

Pereyra: And the same with fish meal?

Meyer: Yes.

Dave Benton: Steve, I'm looking at the table here and it says. . . did I understand you to say that mince is 15% under primary product? Because, the table shows 22 to 50% .

Queirolo: Mr. Chairman, just for clarification. The ranges that appear on page 88 are inclusive of the recovery rates that were reported to NMFS over the 94-95 period for both the Bering Sea and GOA. So, they are bracketing the entire range of performance for those products. Those are not the institutional rates. The institutional rates in fact are on page 89.

Benton: But in this instance, for mince product, unless I'm reading that table wrong on page 89, it's still 50 and 22, correct?

Meyer: Mr. Chairman, Mr. Benton, you're correct. I was taking what Mr. Pereyra had said as a correct figure; I wasn't looking at the chart. What's published here is the correct number.

Kevin O'Leary: Just so I understand for sure what's going on here. In a deep skin pollock situation, if a pollock boat's primary product form is deep skin fillets and their real rate on that particular operation is 13%, as long as they get 2% more recovery out of some other ancillary product form, that's all they have to do. In other words, they could be grinding and dumping the rest of whatever their total weight is. Is that correct?

Queirolo: No. Again, it's a necessary and sufficient test. If they grind and dump any round fish, they don't have enough product on board to back cast to meet the retention requirement, which says you retain 100% of your fish. The 15% only applies in the utilization test, which is the second test. If they grind any round fish and pump it out, they don't have a product form to use against their primary product back casted to show they kept everything.

O'Leary: I guess what I was trying to get at, really, is a situation where there's more to use in the offal, let's say, that you could get above the 15% rate. Now, you're not necessarily grinding whole fish and dumping them

overboard, but there's a lot of usable byproduct of the mince operations. Do you understand what I'm getting at? And, if you're only getting to the 15% rate on utilization, you could be dumping usable byproduct overboard.

Meyer: Mr. O'Leary, I think you have identified one of the fundamental weaknesses we've always had with PRRs and a fundamental weakness we've always had with some products. Meal in particular and mince in particular are difficult to separate -- did all of the offal go into it from a primary product, and there's a real hard burden on us to try to say, if you took all the frames and everything that was left and you put them in, then we have to calculate how much of the mince or how much of the meal you have on board is actually made out of that product. I'm not telling you that it's easy, it's very, very difficult. And that's some of the frustration we feel when many times people claim that we're looking to set up a police state, that we want perfect enforcement. Enforcement is exceedingly difficult now to make even the bare bones case. And when we start adding more bells and whistles on that, make it more difficult, then we go from the possibility of making a case to extremely unlikely of ever making a case, and not setting up any kind of a level playing field for people. So, yes, you've identified a potential area that'll be difficult for us to do, but not impossible.

Queirolo: May I add to that? I don't think, Mr. Chairman, that there was an expectation on the part of anybody participating **[end of Tape 32; start Tape 33]**

NOTE: Due to problems with recording equipment, approximately 15 minutes of tape 33 was either lost or not recorded. The following is where the tape picks back up again.

Lisa Lindeman: . . .[starts in middle of statement]. . . justified. And in the roe-stripping opinion it discussed that regulating fishing to reduce waste is a legitimate role of fishery management measures and it says that one of the justifications for doing that is to achieve optimum yield, and the definition of optimum yield, or references to optimum yield emphasizes food production in considering what amount of fish will provide the greatest overall benefit to the nation. And it says that the national standard guidelines say that food production encompasses the goals of providing seafood to consumers, maintaining an economically viable fishery and utilizing the capacity of the U.S. fishery resources to meet nutritional needs. And social factors that could be considered in setting OY include worldwide nutritional needs. So if the Council chose to put some kind of a limitation on meal production it should be justified in terms of OY, meeting nutritional needs, etc., but we don't think that there's any legal impediment to your doing that.

Pereyra: Another question for counselor. Following on that, then it's my understanding that under the Magnuson Act processing is not considered fishing, is that correct?

Lindeman: At-sea processing is considering fishing; it's in support of fishing activities, so we include that as an area that the Council can regulate.

Pereyra. All right. Now, we have federal fishery observers, we have them on vessels at sea, we have them on shore plants. If we don't have the authority to regulate what's going on onshore, except as it might relate to monitoring fishing activities, will federal fishery observers be able to collect information relating to processing, which has no relationship at all to fishing, onshore, since processing onshore is not under the Magnuson Act. Or would you have to have a different set of observers onshore that would be coming from the state's side?

Lindeman: The observers in the plants collect data now and it's incidental to fishing. They collect data on the fishery resource, they collect data on prohibited species, so that is related to fishing, broadly (?) defined by the [unintelligible]. . . so, I don't see a problem.

Steve Pennoyer: Mr. Pereyra, I'm not exactly sure where you're going with that, but nearly all the data they collect, even on products, anything that's in the plant or potentially used to backcast total catch, so I'm not sure. . .

Pereyra: Right, that's fine. That's . . . on the retention side, but I'm thinking on the utilization side. When we get to that side, then I think we've stretched beyond what the limits are and authority and I 'm wondering if we're going to get into a problem because of that.

Pennoyer: Well, I don't know how this all comes together, but Mr. Benton asked two questions there. One had to do with frameworking PRRs and setting standards. It's clearly within the Council's ability to recommend to the Secretary different product standards and we've actually passed regulations; these are in regulation now. I guess I have a little trouble with what exactly you meant by that, because these are based on date of observation and Council could set a standard that they want somebody to come up to this level for a fillet product. Presumptively you'd need data; there needs to be something there. I guess what I'm saying is even a frameworking is a regulatory process; I mean, it's a regulatory amendment of some kind. But I have a little trouble in doing it in a very short time without looking at these things and figuring it out, because they become extremely allocative in TAC setting and everything else and so, I don't know exactly where you're going with that, but, yes, the authority is there to make recommendations. What we mean by frameworking is something I'm still not totally clear on.

Benton: I can clarify what I was thinking, in any case. It's just that obviously these PRRs are set in some cases with relatively, well, data that is somewhat dated. They are the best that we have presently, but we will over time hopefully collect additional information and the industry very well may be in the process of developing new technologies and new techniques that increase the utilization under these different product forms, and what I was most interested in was whether or not we could in the plan put together a mechanism so that it would not require a full-blown plan amendment if you wanted to change a PRR in this list. Clearly such a change would be a regulatory change, it would require new information, it probably would require additional analysis, and would have to be subject to all the public processes that we employ in the Council process, so I don't see it as being. . . I don't envision it as being something where one day it's this, it's 15%, the next day we come in and just have a vote with no public comment, no analysis, no information, and it's 20%. That's not what I'm thinking about. What I am thinking about, though, is a process maybe similar to the specifications process where there is information provided, there is opportunity for public comment, there is analysis, and on a periodic basis, say once every couple of years or whatever, the Council can review it but it does not require a full-blown plan amendment every time one of these numbers comes up and maybe there's a reason to make an adjustment.

Pennoyer: I thought that was where you were going. These are reg amendments, not plan amendments, anyhow, so I think it's within our reach to do it because even the spec process is September to February; it's a six-month process basically, and a lot of the comment, regulatory process, goes on a little more behind the scenes in the spec process than it might with something else, but I think that's reachable.

Benton: One final response to that is that, assuming that there may be a Magnuson Act approved this year that's similar to the bills adopted by the House and Senate, there are some procedures in there to streamline some of the regulatory process a little bit, and whether or not it's six months, or whatever, I think that it still would be a regulatory amendment, it would still be subject to that regulatory process.

Pennoyer: That's fine; I think we can do that.

Pereyra: I'm a little bit puzzled here because it seems to me what you're talking about is really a function of the National Marine Fisheries Service. They're the ones that have the where-for-alls, the authority, the so-called, the day-to-day management authority, such as the Alaska Department of Fish and Game has for those matters that you manage. It's really within their authority to do this. What we do is we set the policy guidelines and whatnot and they carry them out. Now if they decide that based upon changes and so forth some product recovery rate should be changed or should be done in a different manner, in order to achieve estimates of the total yield from the fishery, the total take from the fishery, or the total products that are coming out of the fishery, it's within their authority I would think to go ahead and make those changes. I don't see how the Council gets involved in that

process. If we do, we better start talking about having a meeting every month because that sort of level of involvement of the Council, I just think is inappropriate.

Benton: Well, Dr. Pereyra, I don't think that we would have to have a meeting every month, but what I am. . . the reason that I brought the matter up, and what I'm concerned about is that in public testimony we heard a number of people that were concerned about whether or not the Council was going to have a monitoring program that would look at IR/IU and evaluate its effectiveness and, on a periodic basis, review that and possibly make adjustments to improve its effectiveness, and what I was trying to do was get at a procedure that would allow that to happen without it being so cumbersome that it wasn't a two-year process, possibly a six-month process, if we wanted to make those adjustments. And certainly it's the authority of the Secretary through National Marine Fisheries Service that implements any of this. And, even if the Council were to, say on a biannual basis or an annual basis, review the effectiveness of IR/IU and the standards that we put in here with the idea that we may or not make adjustments, those are still a recommendation to the Secretary and the Secretary makes the final decisions on those through the regulatory process. Everybody would be involved in that process and I don't believe that it would be cumbersome; my idea would be to make it more efficient, as counselor said, and make it such that we can fulfill our obligations to those folks in the public that have identified that as being a big concern.

Pereyra: Mr. Benton, I certainly have no problem with that. I certainly embrace the idea of us having an ongoing review of the IR/IU process and I think that that's appropriate for the Council and it comes as a recommendation to the National Marine Fisheries Service; we do this all the time. But what I'm concerned about is us getting in the process of actually going in there and nitpicking this and nitpicking that and getting involved in some sort of a regulatory process that's really outside of our scope of activity. I don't think that. . .at that level I think then we've exceeded what I would consider to be prudent. I do think it's important to see how the program's going and look at the data, determine whether we think it's being effective or not being effective, make some broad recommendations and so forth, to the National Marine Fisheries Service and to sort of assist them because they're getting input from other sources as to how they are managing the program as to how to achieve the broad objectives that the Council's trying to achieve. I think that's where we should be.

Benton: But, Dr. Pereyra, you're not suggesting that you want National Marine Fisheries Service to be changing the PRR rates without having opportunity for public comment or Council review, are you?

Pereyra: They don't anyway. They always get public review.

Lauber: O.K., let's cut off this conversation.

Dave Fluharty: Are we as a Council basically done with this set of questions for Dr. Lew?

Lauber: I don't know; I'm finished, but I don't know about the other members. Let me ask. Do we have any more questions of this panel? Obviously they'll be in the room if we need them? Can we excuse them? O.K., thank you.

Fluharty: I didn't want to excuse all. I wanted to ask if Steve Meyer could please address some of the issues that were raised in the public testimony. I think that there were a number where people raised issues of how would something be done, what would be the impact, what is the existing regulation and how would that be carried out under IR/IU? **[end of Tape 33]**

Tape 34

Meyer: Which question, Dr. Fluharty?

Fluharty: I think that if we divided into. . .I don't have a full list here; I was more listening to what was there. It seems like one question was over this question of this abandonment and what that means relative. . .the existing abandonment thing and how that would play out under IR/IU.

Meyer: The current abandonment program that we have, and again some people have referred to it as the great government giveaway, we recognize that you can set a directed fishing standard at 20% and that, just like you can set a speed limit at 55 m.p.h., that people that are at 56 m.p.h. are probably not routinely written tickets. That's probably a factor of the courts more than policy by agencies. The courts have said we don't have time to take 56 m.p.h. cases unless there's some extraordinary circumstance and so they probably developed some defacto range that if somebody's not 5 m.p.h. or 10 m.p.h. over we're probably not going to write them. Now, once you go 10 m.p.h. over, maybe to 15 m.p.h., it's likely somebody will be written a ticket and probably nearly in every case if you're 20 m.p.h. over you'll get busted. Well, with the current directed fishing standard I think that kind of thinking applies, and that it was more institutionally recognized with the voluntary abandonment, we know people that exceed 20% are in violation of the regulations so they have in fact committed a violation. So our way of dealing with that is to let them voluntarily abandon a portion of that, sort of a forfeiture is what it boils down to. If we're going to take it, they voluntarily abandon it; the proceeds go to the government. It's something that right now many of my officers claim has taken up so much of their time that they can't turn their time to other programs and I am very, very concerned that if we set something up to where we institutionalize this voluntary abandonment situation across the entire fleet for all fisheries we can't handle it with the amount of personnel we have. I would be forced to increase the amount of staffing I have if we put that across the whole fleet in all circumstances, and particularly in this IR/IU program. I guess I would also say in the same highway example, in some southern states you have a maximum speed limit and a minimum speed limit and if someone is going below a certain speed limit, they could be written as well, and I guess unless there was an extraordinary circumstance they probably wouldn't be written. In some cases it's 55 for maximum and 40 for minimum; if someone's going 38 he probably doesn't get written, but if he's going 15 he probably will. Again, we come to that same situation when 20% is the exact number, you can either be somewhat over or somewhat under and again I don't think we're looking to hang our hat on tiny differences. What we're looking for is significant overages or significant underages one way or the other. Does that sort of answer your question on the IR/IU side?

Lindeman: Just to emphasize a point. With the voluntary abandonment form that people have to sign, it says on there that it is a violation and those have been used as priors in some prosecutions. So, it's not just a free-for-all thing. They are violations and they are used.

Meyer: And to further clarify, once they sort of get over that defacto range, and I'll tell you up front in some cases people can go as much as 100% over the directed fishing standard and not get a serious violation. But when they go beyond that they are given NOVAs and they are given violations; so it's not a freebie program that says there's no end to this. There are limits that are put on it; again, there's sort of a defacto limit that's set up on what we think the court systems can handle. We realize we can't bury the courts with those type cases; there has to be some reasonable standard that people will deal with. And I guess I've also heard some comment towards 'We can make laws just because enforcement wants to have enforceability.' I guess what I would comment is I don't want a police state. In IR/IU, obviously the most restrictive thing that law enforcement could set up is you don't discard anything and at the most ridiculous level we'd say take boulders to wall builders and take mud to the adobe builders and if it comes up in the net you don't throw it back. There's true IR/IU and it's simple for us. Obviously it's ridiculous. The next step back from that was, O.K., well, keep the fish you bring up, you can throw back the seaweed and the rocks and the mud, so we'll water it down; we'll know some things are going over the side but we'll keep the fish. No, fish isn't acceptable, we need to go down to four species of fish, and as you make it more, as more and more things are allowed to be discarded, it becomes pretty soon exponentially more difficult to make any case whatsoever. Now, I don't think we should be here just to make cases, but I think we should be able to make some cases so we pass a bare red-face test to say this is working. I've gotten beat up enough by Steve Hughes over the VIP program to say, VIP don't work, and I don't want to see us put another, and I won't use the term unenforceable, but I will use the term so likely as not to be enforceable, that we don't pass any kind of red-face test on the books. And I think as we start adding more bells and whistles to the IR/IU we fall into that.

And I guess by example I'll use another comparison here, when you start phasing in something in a percentage, particularly on discards, it becomes extremely difficult for us to know where's the other part of this. It was in the ocean. How can we really determine what percentage of discard you threw away. We normally by example look at astronomers and call them people that go out at night and look at stars with a telescope, but there are heavenly bodies out during the day -- the sun is out the moon is out, and there's actually two or three stars that if you know where to look, on a clear day you can see them. We're just asking to be in night-time astronomy with this stuff. If we're forced to daylight we don't pass the red-face test, and we're not asking for the Hubble telescope, we're not even asking for binoculars, we're just asking to be in the night-time side of this. So, some of the bells and whistles you start adding on takes us outside this minimum enforcement and that's what we're asking for. Did you have further questions here?

Fluharty: I guess just one follow-up, and this relates to the abandonment issue. As I recall, the way it came up was someone who is sincerely trying to achieve the directed fishing standard will come in at or below that level, but the complaint is that others who are not necessarily trying to achieve that find that they have an out even though it is a violation; I don't know what happens besides forfeiture. But it doesn't accomplish the purpose of having the directed fishing standard, which is to reduce the bycatch, or . . .do you see this as prevalent enough to be of concern, the Council should be concerned about that, or is it rare enough that it's not a problem in your opinion.

Meyer: . . .Let me try to restate it to make sure I understand what you're asking me. Are there enough people now that are going over the . . . say something goes to bycatch status at 20%, are there enough people going over it now that I should really be concerned about going to this IU/IR thing? Or are you asking me something other than that?

Fluharty: The existing program that you are enforcing with the directed fishing standard, independent of IR/IU.

Meyer: Currently some of my staff have very deep concerns about it and some of them say they're close to their max right now on what's going on. So, I would say to you that some of them are very concerned. I would say that we'll probably be able to live with a program that doesn't have too many bells and whistles over the basic IR/IU that's been recommended by the working group. I have some real concerns about percentages of meal. I think that again takes us to the daylight astronomy to where we're not becoming effective in what we're doing. But I think we can live with what the working group recommended.

Bob Mace: Mr. Chairman, I'm getting some signals. I think it's about time, we're burning a lot of daylight here, to get on with this and get on to the SAFE documents and I'm ready to move my regular motion.

Lauber: Are there any more questions of this group? Mr. Meyer.

Meyer: I'd like to make one last clarification to a question Linda Behnken asked earlier. Under the current pollock roe regulations it says no discard of processed product. Any pollock product that has been frozen, canned, or reduced to meal, may not be discarded at sea. Within the jurisdiction of the Agency, within the zone, people cannot discard primary pollock products and if they're frozen in blocks you can't have ice cubes floating behind the boat, and that can be prosecuted. Now, that only goes to pollock, so if there was a decision to extend that to other species it would take some kind of regulatory action to do that.

Linda Behnken: Your sense, then, or what you're telling us, is that as long as we pattern a reg amendment for other species on that, you've got the tools that you need.

Meyer: We have tools where people could be prosecuted, yes.

Lauber: Any other questions of this group? Thank you, and Mr. Meyer I'm most impressed by your comments and justification for your positions and I appreciate it. I know it may seem at times that we have a difference of opinion, but I don't really think we do.

Mace: I'd like to move the AP recommendation, with respect to the IR/IU issue, excluding the 10% round fish by weight issue. And if I have a second I would like to. . .

(?): Second.

Lauber: Moved and seconded, speak to your motion, Mr. Mace.

Mace: I think we've heard a great deal of testimony, it's a very complex issue. My motion parallels the recommendations of the working group, and although there have been a good many suggestions for altering this, I think this is a basis to start and at least to make some amendments if we wish to do so, but I'm persuaded by the fact that the industry group spent a lot of time going over this issue, they've told us that it's important that we don't alter this or they're going to lose support for their position and on that basis I support this motion.

O'Leary: Just for clarification. The 5-year provision in the AP motion, is that from adoption or from implementation?

Mace: I think it's from implementation of the . . . that's my understanding.

Clarence Pautzke: Just a subtlety that came up in the committee is what we're doing is we're putting a 5-year delayed implementation, but it would require further Council action to derail it. In other words, we want the National Marine Fisheries Service to write the regs such that it pops up in 5 years; it doesn't require another Council decision to have it pop up in five years. It would go in the regs that this happens in the year whatever it is.

Benton: For clarification from the maker of the motion. So, under this motion, for pollock and for P. cod we would require, if the Secretary approves it, 100% retention commencing in 1998, 'cause implementation is scheduled I think for 1998. We would require a 5-year implementation of 100% retention for yellowfin sole and rock sole, so it would be the year 2003, because it's 5 years after implementation. We would set a minimum PRR of 15% for determining utilization as the staff has outlined for us, and that the implementation and enforcement of this program would be as staff as laid it out, with the two tests for utilization and for retention. We would not include the 10% meal limitation that was recommended by the AP; you deleted that from your motion, did you not? [Mace: Yes] Then, there are some other items here that aren't in the AP recommendation; I don't know if you intended to include them or not, Mr. Mace. One of them is that nothing occur in the Bering Sea unless regulations are developed for the Gulf of Alaska. We had a lot of public testimony back and forth about that and some debate; that is an issue that is the AP motion and I seek some clarification whether you intend that. . .

Mace: My intent was to parallel the portion of the AP motion that coincided with the industry group and it did not include that. You spelled out the four issues that. . .

Benton: It did not include that; so it includes those four issues I just identified. Thank you.

Lauber: Any further discussion?

Behnken: I'd like to offer one amendment to that, and that is that we framework the 15% PRR requirement.

Benton: I'll second that for discussion.

Lauber: Is that framework the 15% or is it framework PRRs?

Behnken: It would be framework the PRR. Right now we're setting it at 15%. My idea would be, as we discussed I think during the question part, that that be done, to require a regulatory amendment to change, rather than a plan amendment so that in the future if we see industry making progress on improving those PRRs that the Council can come back and fairly efficiently, but with lots of public input, raise those to a more appropriate level.

Pennoyer: Again, I'm not sure what we mean exactly by frameworking. That's the discussion Mr. Benton and I had; you have the ability under regulatory amendment process initiating it now, looking at the data with public input to start [unintelligible] the PRRs now and recommend that to the Secretary; we can do that. I'm not totally clear on . . .

Lauber: Mr. Pennoyer, if we don't pass this motion, what would we be able to do? Does it take a full plan amendment, a regulatory amendment. . .

Pennoyer: Regulatory amendment now.

Behnken: O.K., I'll withdraw that. I didn't understand that from the discussion.

Benton: I would offer one amendment to the motion, which . . . well, I would move that the delay of implementation for yellowfin sole and rocksole be changed and that what we would do is implement the 100% retention standard for yellowfin sole and rock sole on January 1, 2000.

Behnken: Second.

Benton: If I could speak that. As has been pointed out in public testimony, this issue's been before the Council since I believe 1993 or 1994. It has been debated seriously for the last two years at least. It was clear and has been clear, I think, that the Council was going to move forward in some regard with full retention and improved utilization for at least this suite of species for well over a year. Implementation of this program for pollock and P. cod will not commence another additional year, at least, if approved by the Secretary, and a delay of 5 years for implementation of yellowfin sole and rock sole from that date is almost a 10-year lag from when we first started talking about this issue. And, while I have concerns about the ability of the industry to address all the issues that have been raised about the flatfish species, I don't think that waiting until the year 2003 is appropriate or necessary. I think that the period of time that I have identified provides the same opportunity for industry to deal with the market and gear development issues that have been raised with regard to flatfish and I note that in pending legislation reauthorizing the Magnuson Act we were. . .there's provisions in there that would instruct the Council to deal with economic discards and bycatch and institute programs to reduce them over a 4-year period and my proposal is more within that time frame.

Pereyra: I can't support this amendment, for a number of reasons. First, the committee worked long and hard and I know, although I didn't attend any of their meetings, I've heard that there were a lot of compromises that were made. I think the industry, both onshore and offshore worked very hard and diligently to bite the bullet, so to speak, and accept considerable costs to comply with what I would rather like to see called IP, which is improved perception. They're willing to accept an enormous cost to comply with what appears to be a requirement being asked of us that is outside what I would consider to be the realm of rational business, rational fishing. The yellowfin sole fishery, with which I happen to have some experience, is a very tenuous fishery at best. That is a relatively high volume fishery and there are a minimum of products which can be made. Yellowfin sole is made into kurimi, which is a sort of a type of a headed and gutted-type of product which goes primarily to Japan. It takes a reasonable sized yellowfin sole to do that. Yellowfin sole is also frozen in the round, some boats go ahead and sort the product into large and medium yellowfin sole, discard the small ones; shore plants the same way. Some will just freeze everything above 250 grams, or thereabouts, into one pack. What happens is that the product is then shipped to where it is re-processed into a form where it can be utilized in the U.S. market, primarily in a fillet form. And that re-processing market now has shifted from Korea to China. The

market itself does not have what I consider much profit in it. In fact, some boats have dropped out of the market because the price of the product dropped about $100 a ton. If you go ahead and require in a very short period of time, before people have had a chance to really what I would say, have a chance to develop new product forms or develop new markets, require that 100% of the yellowfin sole be retained, you will essentially eliminate the fishery. In addition, in those instances which will be very small where you might have an opportunity to make a product, the requirement to keep all the smaller fish will result in the people that are processing the product, whether they're onshore or whether they're offshore, to be paid a significantly lower wage for their efforts. This is something which I think the committee felt required considerable time to really get their arms around, so to speak. And so I think it's much more appropriate for us to follow Mr. Mace's initial motion without modifying it and allow us to give the industry a 5-year period in which to meet this requirement, which I think is going to be very, very difficult for them to meet.

Pennoyer: I think the committee probably said it very well in their last paragraph of their report and I think as we consider various possible options and modifications to the proposal, we need to take it into account. [It says]. . ."Finally, an overriding theme from the committee to the Council is that we don't expect to implement an optimal IR/IU program on the first try. And this thought needs to apply to a variety of alternatives being considered. However, the committee believes it is essential to move forward at this time and then take the necessary downstream steps to optimize the program." I think one of the proposals was that we move into a step-wise implementation on flatfish and I think probably Mr. Benton and others would have been more comfortable if in fact there was some movement earlier than some end time period. I think what the committee recommended was that we look at this, view the progress and then as we get into the program, decide whether we're going to change it or not. Obviously, if we go through year one or two and there's not much happening then I think we would step back and say what more do we need to do. I'm a little bit concerned that while people are on notice that we are going to discuss this, there's no mandatory requirement until this plan actually is passed and making a significant business investment, if it is, and I'm not sure what is going to be required, is something that is based on a regulation actually being passed, not discussed. Now, obviously it's prudent as a businessman if you're going to capture your share of the market you probably should be out there thinking about it if you know it's possibly coming down the pike. Like Mr. Benton, I think we've got to get on with this and I think I'm pretty well convinced with pollock and cod we can do that. I don't know, given a lot of the difficulties I've seen in the flatfish fishery where it's going to go, let alone where they're going to go with currently parts of the flatfish fishery that aren't marketable. Year 2000 is two years from the date of implementation and that strikes me as being a little bit fast. I don't know how we work around that or what we're going to do after two years; if we come back in two or three years and see how this working, see how flatfish is working. We may still make another adjustment, and I'd be more comfortable with more than that period of time. I don't know whether 5 years or 2 years, I don't know if we're going to get all the way there in 10 years; I'm not that sure of the flatfish market. But 2 years strikes me as rather short, so I don't know that I could support that.

Fluharty: I think that we've heard significant public testimony about differential impacts of this action and a willingness to proceed if we provide an adequate amount of time and it strikes me that moving, as this motion suggests, much more rapidly is pushing the envelope too much. I think we're going to seal a lot of people's fate and I don't think that that is an appropriate way to deal with this and therefore I can't support a shortening of the time because I think we need to think of differential effects on various size classes. I also would remind us of the SSC's evaluation of this. They've looked very carefully at this, primarily from a variety of perspectives and I just would ask that everyone take a look at their recommendations and ask ourselves what we're doing and if we're prepared to jump in with both feet or if we want to put a toe in and move a bit more carefully, or at least one foot in instead of both feet, and so I can't support this.

Lauber: Any further discussion on the motion? Are you ready for the question? Call the roll on Mr. Benton's amendment, which is yellowfin sole/rock sole to the year 2000.

Pautzke:	Barker	No
	Behnken	Yes
	Benton	Yes
	Fluharty	No
	Mace	No
	O'Leary	No
	Pennoyer	No
	Pereyra	No
	Samuelsen	No
	Tillion	No
	Lauber	Yes

Pautzke: Failed.

Lauber: All right, we have before us the main motion. Are there any other amendments? Are you ready for the question?

Fluharty: I'd like to propose an amendment. I move that we follow the recommendation from several of the people here, that we have 100% retention for Pacific cod for all gears and all size classes implemented immediately; that we have 100% retention for pollock implemented by tier of vessel class as defined: less than 125 ft; between 125 to 159 ft, and over 160 to 190 ft, and then above 190 ft. Those in the upper size class would implement immediately, those in the next class down would have a year to implement this; the ones between 125 and 159 ft would have three years; and those under 125 would have five years to implement these measures, with the five years meaning the yellowfin and rock sole as well.

Samuelsen: Second.

Lauber: Care to speak to your motion?

Fluharty: Yes, I would. I don't want to, in the interest of moving this on, I think we've all heard this morning and yesterday what some of the problems are. I think we have the good will of a fairly innovative group of small-boat fisherfolk who are working on this and they will move as quickly as they possibly can to implement this, even in advance of these time lines. But I think there are significant problems that are faced by these and we need to provide a way for them to move ahead and I think we can do this in ways that are less onerous than are proposed by the working group without doing damage to what the working group has proposed.

Benton: I'm reminded of old college days when the professor would hand out an assignment at the beginning of the quarter or semester and you knew it was due at the end and by God you were going to get around to getting that paper written because you sure as heck wanted to get it done so you had time to do it right and you know, if it wasn't like midnight the night before it was due and I was up there typing that thing because I hadn't thought about it until six o'clock that morning. And I just see that situation developing here. I can't support this motion. The motion that I made previously that went down, I see that as being nothing more than putting off dealing with this problem. We're talking about a fishery that has the highest discard rate and one of the dirtiest fisheries in the North Pacific and we're already giving them a 5-year extension to try and see if they can figure out how to clean this up. We're now looking a getting another exemption for those vessels in that fishery to allow them to continue with the business as usual. I don't think that the intent of the Council is to allow business as usual in this event. I don't think that that's what we're trying to do. I think that what we're trying to do is to develop measures to in a somewhat logical, hopefully, and step-wise manner, deal with what has become a national problem and the Nation is looking at what is happening in the North Pacific and elsewhere around the country and the world and right now we're the ones that are in the hot seat to make a decision. And I think providing an exemption, while I have some of the same concerns that Dr. Fluharty voiced and some of the same sympathies

for individuals involved, I think it is the wrong way to go. I don't think that it is appropriate and I don't think it is in keeping with the Council's history to promote conservation and have fisheries that we can all be proud of.

Pereyra: I was wondering, what are those size classes again, Dr. Fluharty?

Fluharty: Below 125, 125 to 159, or I guess below 160, 160 to 190, and over 190.

Pennoyer: I think there is quite a difference here and Mr. Benton alluded that this fishery was having too much time on flatfish, the vote we just took. But there's a significant difference here. We have two species that are fully utilized, subject of a lot of allocation discussion, pollock and cod. In the flatfish case, in no case are we utilizing the total TAC, even of what is supposedly legal size fish and counting for all discards, so I think there's a difference here, but I agree that that difference makes it a different situation. I think in one case a longer delay may have been warranted; in this case I don't know that it is. I also have those same sympathies, but pollock and cod, we've just gone through a huge cod allocation discussion not too long ago and pollock, as you've heard, we may have other problems with everything from Russian fishing to the ecosystem itself. we may have to take into account, they are very desirable species. And those that are taken somebody else could use are obviously something we'd like to avoid, particularly if they're taken as juveniles. So I think it is different and I think that the pollock and cod situation is something we want to get on with.

Lauber: Is there any further discussion?

Behnken: I think most of what needs to be said on this has been said, that it is a very different situation. We had substantial testimony that with pollock and cod it's not only a conservation problem but it's also an economic waste because with someone's waste someone else would be using it in this situation. I think with regards to flatfish, 5 years is giving them enough time. I think that Teressa Kandianis has a really good suggestion of the industry coming forward with requests for experimental fishing permits to start trying some gear modification, some different ways of fishing, and I for one would certainly encourage NMFS to give them that latitude to see how far they can get within the 5 years, which to me seems awfully generous, to come up with some solutions to this problem. I think we've gone far enough at this point with the slowing down addressing the waste problem.

Pereyra: First I wanted to mention that the amount of pollock that we're talking about here is quite limited, because these are the smaller vessels. But the one point I wanted to make is that this has been characterized as a conservation issue and I want to make it very clear that this is not a conservation issue, that we're talking about the same quantity of pollock being taken from the fishery as a whole. We're talking about allowing a sector which may have some difficulties having a little more time to fully utilize the pollock which is taken incidentally in the flatfish fishery. I'm also aware that there are going to be some difficulties for some of these vessels because of their loadline situation. That greatly restricts what they can do with fish which are incidental to their main operation. I'm not convinced in my own mind how that's going to be handled by them. But it does greatly restrict what they can do. Where larger vessels that are loadline qualified can make a mince, for example, out of small pollock. That mince is a saleable product and the technology is there and you can do it; it's a matter of adjusting the factory and making the investment. The smaller vessels, though, don't have that opportunity. They're pretty much limited to a headed and gutted or frozen round product and so I think we need to keep that in mind also, that this is not as clear cut as it might appear on the surface.

Fluharty: Just the final thing. I think it's wrong to characterize this as a last ditch performance on a deadline that has been given you because I think at least the three people I remember testifying on this all spoke to investments that they had made to improve their retention and utilization in advance of any action that the Council has taken and some of these sounded like pretty significant investments. So, obviously I can't know for all of the people in this fleet; maybe we're looking at the best and brightest here before the Council, but it does seem that we've had a very non-specific deadline. We've had people working, using their own economic incentives. I mean, they're trying to improve their own operations obviously to achieve these targets and I think once we give them

that chance and a firm deadline we can expect to see performance. And certainly I'll be watching and as Dr. Pennoyer suggests, the Council ought to be watching to see what we can do to make this process work.

Pennoyer: I was asked whether in fact the analysis allowed you to get to this proposal, and in fact our judgement is it does. I just wanted to make that clear because there was some question as to whether you'd have to go back and re-analyze and start over again. And, I think that it does, so that's not a barrier to discussing this.

Pautzke: I have a quick clarification of Dr. Fluharty. The line between Tier 3 and Tier 4, I thought your motion was the same as what we'd gotten, which it breaks between 194 and 195; then when you were asked again I thought you said something like 190 and I just wanted to make sure I got it.

Fluharty: I think you're correct - 194 and 195.

Samuelsen: On the data that was presented to us earlier, I think it was . . .some of my handwriting I can't even read, but it shows that the discard rate of boats over 159 ft in '94 was roughly 90%; in '95 it was 86.5%, using this rate. And I think what your motion is addressing is Teressa's motion that she presented to us last night with the four different tiers in it and what I'm wondering, and maybe staff could point it out, is what is the difference, what kind of savings. . .I could see a savings on boats over 159 ft with the 3-tier . . .but I can't see it on the four, based on this motion. I guess what I need to know from staff is on Tier 4, boats 195 to above 230 ft, what's the savings here? I could see it . . . I'm comparing the 159 ft 90% discard rate, over 159 ft; I can't see where the 195, 230's coming in.

Fluharty: As I understand it, unfortunately it was not possible to do a breakdown for those two categories, if I understand correctly, that the data weren't broken out so you could discriminate that 160 to 194, and then 194 and above and so that may be a problem in terms of being able to answer the question, but if I'm incorrect, somebody could correct me. So, my understanding is a substantial proportion of that 90 or 86% is taken by vessels above 195 that we're asking for 1 year delay in implementation for those between 160 and 194, but I can't tell you what that savings is.

Pennoyer: I think we can do that by subtraction. We know what the total pollock discard was in '94, and couldn't we then just subtract these other discards here that are . . .80 or 90 tons from that total?

Pereyra: Doesn't work. You're trying to break within a class and you have no data to do that. I'm a little bit puzzled by this because it would seem to me that. . .I'm in support of the motion, but I'd like maybe to see it modified because I can see where you get down to these smaller vessels and this is much more difficult for them. But if you get up around 180 feet, if a vessel that's 196 feet can do this immediately, then I have trouble seeing why a vessel that's 186 feet can't. That's where my problem is. You have to compare a 190 ft vessel with a 130 ft vessel, then you've really got some significant differences, so maybe the classification is too broad; maybe it needs to be truncated somewhat.

Fluharty: Do you have a friendly amendment?

Pereyra: Well, my friendly amendment would be to follow the breakdown that's shown above, that is, less than 125 ft; 125 to 159 ft, and greater than 159. Do it that way, and greater than 159 would be immediate, 125 to 159 would be 3 years and less than 125 would be 5 years.

Fluharty: I'd be willing to accept that.

Pereyra: The reason I say that is the quantity of pollock you're talking about here is quite small; you're talking about, what, 5,000 tons, 6,000 tons, I think, 7,000 tons. It's not a large amount in the overall scheme of things.

Lauber: Is that acceptable?

Fluharty: I would accept that as a friendly amendment. I don't know about the second.

Samuelsen: Yes.

Lauber: O.K., so now it would read less than 125, 5 years; 125 to less than 160 would be 3 years; and 160 and above would be immediate. All right, is there any further discussion on the amendment?

Behnken: I guess, for clarification, this tiered program you're talking about is with regard to pollock?

Fluharty: Only.

Benton: I guess this is a question for the maker of the motion. I guess I'm unclear as to what the intent is here, other than. . .and how the maker sees this doing anything positive. And I have to confess that right at the moment, unless I can hear something that changes my mind on this, obviously I'm going to vote against this motion and I'm actually to the point, I'm almost having some serious doubts about the entire proposal and I would like to hear some reasoning for me that would provide some reason why I should continue to support an IR/IU proposal at this juncture.

Fluharty: I think that a lot of what is considered positive is. . .I need to know how Mr. Benton wants to define positive because I think that if it's in reducing discards we've made enormous steps. This obviously doesn't reduce discards as much as the other proposal, but it's a small difference and for me the positive benefit is that we are in some way recognizing that we're imposing significant costs, not only on the ones that are doing it immediately, but particularly on a separate class or set of smaller vessels that have testified before us as to the effect of these regulations. So for a positive thing I think we're making better public policy with respect to the implementation of a very important set of issues. I think that it does not meet the improved utilization as rapidly so you might consider that negative. I again say it gives people time to meet the objectives of this and we will have a more workable, more useful program through time. So that's why I'm proposing that this is a positive step and makes for better public policy.

Lauber: Any further discussion on the motion?

Pennoyer: I guess 159 is the loadline limit, that was the reason for the break at 159, and there was concern about smaller than that being able to adapt in the near term to this . . .? I guess the numbers being explained is helpful because the total 77 tons is everything over 159. that wasn't clear from this table, so that's a good clarification. I guess then the next question I had asked me is why trawl only; well, longliners aren't catching pollock, so it's not an issue, so. . .my only other question of the maker of the motion is are 3 and 5 still appropriate; are the years still appropriate?

Lauber: They're still in the motion, whether they're appropriate is yet to be decided.

Fluharty: I believe they're still appropriate given what appear to be the timeframes that it will take to adapt.

Lauber: Yes. 125 in 5 years and 126 to 159 in 3 years; above is immediate. Immediate means a year and a half from now, but in any case. . .

Samuelsen: I missed Mr. Pennoyer's comments, but I'd like to offer another amendment. In Tier 1 and Tier 2, the 125 to 159, that implementation would be in 3 years for both gear classes, so we'd narrow it down to two year classes. We'd have immediate and then in 3 years, the boats 159 and under have to be in compliance.

Lauber: So, basically we'd have two categories, well, basically under 160 feet would be 3 years; is that a way of saying it? All of them would be 3 years; above 159 would be immediate. Is there a second to that motion?

O'Leary(?): Second.

Lauber: It's been moved and seconded. Is there discussion on Mr. Samuelsen's amendment?

Behnken: I guess I'm starting to feel reminded of what happened with the research plan where we sort of identified a major problem, moved ahead with total industry support, and then everything started to come apart at the edges and eventually we lost a very good program. And I feel a little bit where that's where we're headed. We had the industry for a long time saying we have a problem out here; we've had the public saying we have a significant problem out here. We identified three species that were really the core of our problem in the area that was the core of our problem, the Bering Sea, and we said, O.K., we're going to launch this program with these three species. Then we heard some pretty convincing testimony that, O.K., flatfish we've got a different problem; pollock and cod, yeah, move ahead with those; flatfish we have to handle differently. We've done that; we've said we're going to give them 5 years. Now we're starting to pull out more species. I just feel like we're going down the wrong path. We need to keep this simple and we need to do it. And I look again at that last paragraph from the committee report, that's what they said. This isn't going to be perfect, but we need to do it. I think we're going the wrong direction with these amendments.

Pautzke: Just for clarification. This 3 and immediate thing applies to any gear group, right?

Pennoyer: Trawl only.

[Several others chime in with "trawl only."]

Pautzke: Well, that's not what Teressa's says . . . but that's what you're saying, just trawl only?

Pennoyer & others: Yes.

Fluharty: My motion as I spoke it was only by size category. Not by gear type.

Pautzke: So that means a longliner that's under 159 ft, which under the original thing would have to retain all its pollock and cod now would have 3 years before it would have to retain its pollock.

Fluharty: That's the way I read the motion.

Pautzke: So, it's not trawl only.

Lauber: And your amendment, Mr. Samuelsen, is . . .

Samuelsen: Trawl.

Lauber: Trawl. O.K., so the amendment would make it two categories, one immediate, one 3 years for trawl only.

Pereyra: I'd just like to respond to a comment made earlier, a couple of comments, made by two individuals. One had to do with the industry wanted something and now it seems we're moving away from it. I recall the industry saying yes they recognize there was an issue here, but the way in which the industry wanted to handle that issue was through some sort of individual quota program. They came to us almost unanimously and said that was the way to handle it and in fact they even offered up that cod would be a good addition to it. For a variety of reasons, which I'm not going to enumerate here, we've moved away from that and now what we've got is a command and control sort of approach which is giving us some problems. With regards to why we should do this, I think that one of the points which hasn't been brought up here recently and that is this unintended consequence of displacing vessels that are operating in the Bering Sea at the present time. These vessels go into the Gulf of Alaska. I recall Ms. Blackburn saying that the people in the Gulf, particularly the Kodiak area, were concerned about that. That's

what will happen. We get too aggressive here and get too cute, these boats are not going to disappear, but they're going to go to another area and I think that's going to have some negative consequences. And then all of a sudden we're going to have people from the Kodiak area coming up here and want us to do something to give them some protection from these new arrivals, so I think this is prudent. The quantities we're talking about are not large in the overall scheme of things. My gosh, we have other discard issues that are occurring right today that are giving people some concern that we don't seem to be making a lot of noise about, so I'd like to see us go forward with this; I think it's the right way to go.

Mace: I'm getting very, very uncomfortable and I agree with Ms. Behnken. The committee has pointed out and starred the issue, 'potential exemptions', other than the 5-year delay for the rock sole and yellowfin, they recommend that no exemptions from the provisions of this program be allowed, and I think that we open the door and I'm not confident we've really seen the surface of all the potential exemptions that we could consider here and if we start this route, I'm about to agree with Dave Benton over there -- let's wipe it out. I think we've just lost all control; either we do it or we don't do it and there's going to be some suffering, but when we start to deal with one group and we haven't heard from the others yet, they're going to surface and they're going to come out of the woodwork and I'm just very uncomfortable with this approach and I can't support the amendment.

Lauber: Good point. A lot of people are raising, we've got to go along with the committee, by golly, when we shouldn't deviate from the 5 years, but by God when we come up to this one, I haven't heard many people mentioning, by God we gotta go along with the committee.

Samuelsen: I'll be voting in favor of the motion. The Council has always recognized the importance and adaptability of the small boat fleet. I think from the data I read and when I came into this meeting and on this discussion, the public testimony compels me to look at it in a different light, and I think that's the public process. I've got to hand it to the people that testified that made me change my mind. I surely wasn't agreeable to the 5 years. Also in public testimony we got handed out data that showed that in '94-95 the trawl pollock discard rates, boats over 159 ft discarded at a rate of 90.36%; the boats under totaled roughly under 10%. In '95 we had a discard rate of 86.8%, over 159 ft; under was about 12%. I think we hit the problem. I think we're giving relief to small boats. If we're going to keep everybody to the same standard, then I think we'd better adopt double observers on everybody's boats like we're imposing on the CDQ fishery. If it's good for the goose, it's good for the gander. So, that's kind of the way I'm looking at this and I think we've hit the crux of the problem and that we're giving the people that testified before us, the small boat fleet, the relief that they need and . . . beyond the three years, if they can't adopt to that fishery, then they better get out in 3 years and I hope the Council record shows it, because they can't adapt. If we're going to start holding the whole industry to one standard I think it should be implemented throughout all our decisions.

[Several calls for a vote]

Pennoyer: I have one other question on the motion. This is catcher processors or catcher boats and catcher processors. This was to give people the time to accommodate the ability to do everything from nets to meal plants and it obviously affects things differently, so it's both catchers and catcher processors? And are the numbers both catchers and catcher processors, the numbers that are in front of us?

[Someone interjected "trawlers"]

Clem Tillion: It says trawlers so that covers both.

Pennoyer: O.K., thank you.

Lauber: Are you ready for the question? We're voting on Mr. Samuelsen's amendment which would carry the Fluharty amendment, so basically it's a substitute. Call the roll.

Pautzke:	Behnken	No
	Benton	No
	Fluharty	Yes
	Mace	No
	O'Leary	Yes
	Pennoyer	Yes
	Pereyra	Yes
	Samuelsen	Yes
	Tillion	Yes
	Barker	No
	Lauber	No

Pautzke: Pass.

Lauber: All right, we have before us now the main motion and we need that to be written, so why don't we break; we'll be back at one o'clock. . . .

Lauber: O.K., Council will come to order.

Pennoyer: I was going to reconsider our last action; amendment anyway. I don't know whether we want to discuss that now before we have the final written motion in front of us or not. Probably do because we'll have to change it.

Lauber: No, actually if it's reconsidered, actually could just strike something I guess.

Pennoyer: Well, I wanted to reconsider the action on the exemption that we voted on before lunch.

Lauber: For pollock there will be two tiers for all trawlers in any fishery . . . that one?

Pennoyer: It was all gears, period.

Lauber: Oh, it was for all gears. . .

Pennoyer: Well, that's part of my problem. What you've got in your hand doesn't read exactly what we passed, so that whole section on . . .

Lauber: O.K., Mr. Pennoyer wishes to reconsider his vote on the last motion.

Behnken: Second.

Pennoyer: To gain reconsideration. . .what we had in front of us was a table on catcher processor discards only; what we voted on was exempting everybody and we don't have the number of vessels that "everybody" means either. I don't know how to either judge the effects of that type of a vote and so I think we ought to reconsider that action.

Lauber: All right. I'm going to ask for unanimous consent and if the motion passes, you're reconsidering our action which would then bring the matter back to the floor for amendment or . . . we're not voting finally on it; this is just whether we should take another look at the last motion.

Pennoyer: I guess that's the correct procedure.

Lauber: Is there any objection to reconsidering our action, last action? Hearing none, the issue is on the floor.

Pennoyer: I guess the same motion is before us, then. I'm going to vote against it. I would like to see the information, which we haven't had in the analysis in front of us, of the number of vessels involved and their current bycatch, but I'm bothered by the fact that we can't predict what bycatch will occur in these exempted vessels that now will enter some of these fisheries with a different advantage from what some other people have, and I think we're not going somewhere we're sure we want to get to? We have a motion from the committee that was fairly hard discussed; the flatfish recommendation they made was probably something they made in light of a lack of exemption on pollock and cod. I think we're opening up another whole area that we may not want to get into and I'm persuaded that there are number of adjustments that we're going to make as we go down the pike on this, and when we get to the main motion I'm going to suggest the committee be formally constituted, work with the agency on a number of these items, including the monitoring. Based on that we may want to make changes in the future, but I think keeping it simple to start with is persuasive to me.

Lauber: Any further discussion? The motion is on the floor as though it was made before, so in order to vote for the motion you would vote yes; in order to vote. . .if you agree with Mr. Pennoyer, you would vote no.

Benton: So, a yes vote would include the exemption and a no vote would go back to the original motion which was basically . . .

Lauber: We are voting on what was called the Samuelsen amendment in total. If the yeses prevail, it will stay on the books; if the no's prevail, it does not pass.

Pautzke: O.K., it's my understanding you're voting on the Samuelsen amendment which was to bring in two tiers for pollock for trawl and . . .[not speaking into mike; can't hear very well]. . .an amendment to Dr. Fluharty's amendment which . . .

Lauber: Let's not confuse that. We're only dealing with the last amendment, which was the Samuelsen amendment.

Pereyra: If I could, a point of clarification. I think what Dr. Pautzke is referring to was sort of made null and void because I think it was kind of a friendly amendment when we kind of joined the two, so it seems to me is whether or not to have a pollock exemption.

Lauber: No.

Pautzke: [still away from the mike]. . .whether to change to two tiers for trawlers for pollock and . . . if it doesn't pass, you still have 3 tiers . . .[can't hear]. . .

Lauber: If you are in favor of the language on the written amendment, the final motion, excuse me, that reads, starting "for pollock:", next three lines ending in parens "(i.e., 1998). " If you vote no you would be voting to strike that part; if you vote yes you would be voting to retain that language. You understand? It's just like you're voting on the amendment to the motion.

Pereyra: But, Mr. Chairman, I want to make it clear that what we're voting on was not an amendment to the 3 tiered, because we never voted on that because it was a friendly. . .

Pautzke: Mr. Chairman, there was an amendment on the floor which had a friendly amendment which made it into a 3-tiered thing; then you had an amendment to the amendment and the advice given the Council is that if the amendment of Mr. Samuelsen passed, it would carry Dr. Fluharty's amendment. And the result of that was 2 tiers for trawlers; 3 tiers for non-trawlers for pollock. If this doesn't pass you'll still have the 3 tiers for all gear groups for pollock on . . .[can't hear]

[Several people talking at once]

Lauber: I announced before the vote that it was a substitute motion and if it passed it would carry the Fluharty amendment. The Fluharty amendment as of this moment does not exist any longer. It's gone. The only thing in here is what you see is what you get. O.K., you understand? O.K., let's call the roll on this motion, which is basically the language on the draft final motion, second paragraph, starting "for pollock:"; the next three lines, ending in "(i.e., 1998)". If you vote no you're voting against that; if you vote yes, you're voting for it.

Pautzke:	Fluharty	Yes
	Mace	No
	O'Leary	No
	Pennoyer	No
	Pereyra	No
	Samuelsen	No
	Tillion	abstain (was out of room during discussion)
	Barker	No
	Behnken	No
	Benton	No
	Lauber	No

Benton: So, Mr. Chairman, now what is exactly the motion that is before us?

Lauber: O.K., we have struck that second paragraph, no longer exists. I presume that we have before us the main motion, as amended, which would read all the rest of it: For retention for Pacific cod, 100%, blah, blah, blah. . .

Mace: Pacific cod and pollock.

Lauber: And pollock.

Benton: That was my question, whether we needed a motion to reinstate pollock was going to be my next question.

Lauber: I think it's self evident. Without objection we will now, since we've changed that, it should read, the first line should read, "For Pacific cod and pollock, . . ." You can add that in. . ."100% retention for all gears and all size classes implemented immediately (1998). For flatfish, 100% retention would be delayed for 5 years from the date of implementation of cod and pollock for all fisheries and all gears, i.e., year 2003. There would be step-wise targets and monitoring of progress during that time. Utilization: There would be a minimum 15% PRR and no limits on the amount of fish going to meal." Is there any further amendments? Hearing no amendments, is there any discussion? Are you ready for the question? Call the role on the final motion.

Pautzke:	Fluharty	Yes
	Mace	Yes
	O'Leary	Yes
	Pennoyer	Yes
	Pereyra	Yes
	Samuelsen	Yes
	Tillion	Yes
	Barker	Yes
	Behnken	Yes
	Benton	Yes
	Lauber	Yes

Pautzke: Pass.

Lauber: All right. There were some other issues we had discussed. Mr. Pennoyer?

Pennoyer: The committee had requested whether we would give them a life after this early death and let them continue on to examine certain issues in conjunction with the agencies and public and those issues were helping design monitoring for phase-in of the flatfish program, how we would look at that; discussions of regulatory discards and the process involved there; adjustments to the VIP program required to make this process work; more discussion of monitoring. I know we had discussions of observers and scales and is the monitoring and enforcement actually occurring, this would be a part of it. Discussions of the interactions of the license limitation program and the moratorium as it interacts with this, and I would move that we formally request that happen and I would commit for the agency that we'll work with that group, particularly on the VIP program.

Mace: Second.

Lauber: Hearing the motion by Mr. Pennoyer, is there any discussion?

Benton: I concur with the motion and can support the motion, however I notice that Mr. Pennoyer left out one of the main issues that the AP identified that we wanted the committee to take up and that we received significant amounts of public testimony on, and that is commencing work on a complementary program for the Gulf of Alaska and if it would be considered a friendly amendment, what I would do is propose that in this motion we include that we have the committee meet on the Gulf of Alaska and to immediately commence work on developing a complementary IR/IU regime for the Gulf, and I would look to Mr. Pennoyer whether that's a friendly amendment, or how you want to deal with that.

Pennoyer: Actually I had it written down here, I just didn't have it in a numbered list so I forgot it.

Lauber: I thought we were going to bring that up later, but I'm glad you did at this time. If this motion passes and the addition is made adding the Gulf, would you also include directions to the Chairman that he make adjustments necessary to include additional persons involving the Gulf? I don't know, but right now I think we may need to make some changes, additions, whatever, to more represent the Gulf.

Pennoyer: Since it's also continuing actions in the Bering Sea, I'd ask that we also include a head and gut boat representative. I think the committee pointed out specifically that they didn't have anybody from that sector on it at this point and I think that they would like to see somebody, at the Chairmen's discretion, from that sector.

Benton: That would be consistent with my proposed friendly amendment.

Lauber: O.K., fine. Is there any further discussion on Mr. Pennoyer's motion?

Behnken: A question of the maker of the motion. The AP also recommended and we had public testimony on the importance of monitoring the program for achieving actual bycatch reductions, setting up a system for monitoring that, and I wondered if that's part of your motion, or if you want to take that as a separate motion.

Pennoyer: In the main motion I included that concept; I may not have worded it exactly that way, but I presume all aspects dealing with this program we'd want the committee to help us look at. At some point we have the question of how State regulations are proceeding and that goes in there too and I would presume that they'd make a report to the committee as well.

---miscellaneous comments--

Lauber: . . .Is that different from what's in the main motion that we just passed - the last line, "There would be step-wise targets and monitoring of progress during that time."

Behnken: I think it's very different from that. I'm looking at the last two recommendations made by the AP from our minutes, "AP recommends that the Council ask NMFS to incorporate into the IR/IU program a mechanism for measuring success of avoiding bycatch and report back to the Council regularly on the results." And then the following line as well, and that's . . . I don't think we had incorporated that so far; I wasn't sure, but Mr. Pennoyer . . .

Lauber: And it's now incorporated in the motion?

Behnken: I think that was . . .

Pennoyer: Yes.

Benton: As I understand the motion it was to reconvene or continue with the committee and certain tasks for the committee. That's well and good, and that's fine. But I would point out that the AP recommendation is also for the Council to ask NMFS to develop and incorporate such a monitoring mechanism in the Bering Sea program we've just adopted. That probably should be either explicitly stated in this motion in some manner or else as a separate motion because this motion deals with what the committee's task is. Maybe I'm confused, I'm not sure.

Pennoyer: I'm not really confused by that; my assumption is that any of the programs that you adopt we're supposed to report back on their success, so I would assume we'd do that, and this is a special request to put emphasis in this case. We'd do that. My presumption is that a lot of that will have to do with some of the things the committee's going to look at anyway and have bearing on their ability to comment to you on the progress in flatfish program and so forth, so I assumed we would do that. But you can add it specifically if you wish and I would accept it as a friendly amendment.

Lauber: All right, is there any further discussion. Is there any objection to the Pennoyer motion as amended? Hearing none, it passes. Now, is there anything further to come before us on this issue, IR/IU?

Benton: Before we leave this agenda item, a question I guess to Mr. Pennoyer. Steve, the only other issue that is somewhat outstanding here was we did have some discussion and public testimony at various times about the deep ocean block syndrome and ways that we might deal with that. Do we need to adopt a prohibition on these as part of this IR/IU program or some other recommendation to the Secretary?

Pennoyer: I'd ask Mr. Meyer to comment on that.

Benton: And this applies both to pollock and Pacific cod and would eventually apply to the flatfishes.

Meyer: The limitation that's on the regulations right now goes towards primary pollock products only. So if you wanted this to include primary cod products as well, you'd have to do a regulatory amendment to include that.

Behnken: I would move that we direct that a regulatory amendment be initiated for flatfish and cod that mirrors the amendment on the books already for pollock to prevent deep ocean blocks.

Benton: Second.

Lauber: Is there any further discussion? Any objection to the motion? Hearing none, it passes. Anything else under this agenda item?

Benton: One other matter. Mr. Pennoyer, just another question; sorry. Under the action that we took just a moment ago in terms of developing reporting programs and that kind of thing, it's my understanding, and I just want to be sure that I'm correct, that the National Marine Fisheries Service will be looking, as part of developing the regulations for this program if the Secretary approves it, a monitoring and reporting program that will look

at and try and measure the effects of this program and periodically bring that information back to the Council, which is basically what the AP was recommending, for the Bering Sea, and I just wanted to make sure that that was already covered. Is that correct?

Pennoyer: I thought that was what we discussed a few minutes ago and we said we would.

Benton: Fine, I just wanted to be sure. Thank you.

Lauber: O.K., can we move on? Anything else under this agenda item? All right, thank you very much.

[End of this agenda item]