

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver *DO FOR*
Executive Director
DATE: May 29, 2012
SUBJECT: FLL MLOA Adjustment (formerly Vessel Replacement)

ESTIMATED TIME 4 HOURS (all C-5 items)
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ACTION REQUIRED

Initial review of RIR/IRFA to adjust the MLOA on BSAI freezer longline LLP licenses.

BACKGROUND

The analysis evaluates a change to criteria, in order to allow owners of Bering Sea / Aleutian Islands (BSAI) freezer longline (hook-and-line catcher processor) vessels that fish for Pacific cod, to replace or rebuild their vessels to a length greater than that specified under the restrictions of the License Limitation Program (LLP) and the American Fisheries Act (AFA). The analysis for this agenda item was mailed out in mid-May 2012; an executive summary is attached as Item C-5(b). Specifically, the analysis considers adjustment to the maximum length overall (MLOA) specified on the License Limitation Program (LLP) license assigned to these freezer longline vessels, to accommodate larger replacement vessels. Originally implemented in 2000, each LLP license is endorsed for management areas, catcher vessel and/or catcher processor operation type, and the Pacific cod fixed gear target fishery, and specifies an MLOA for licensed vessels. The MLOA for the license was based on the length of the vessel initially receiving the license.

The analysis also considers allowing freezer longline replacement vessels that exceed 165 feet in length, or more than 750 gross tons, or with engines capable of producing more than 3,000 shaft horsepower to enter the groundfish fishery. Regulations at 46 U.S.C. 12106(c)(6) limit vessels greater than 165 feet in length, or more than 750 gross registered tons, or with engines capable of producing more than 3,000 shaft horsepower from entering fisheries unless the vessel carried a fisheries endorsement prior to September 25, 1997, or the Council has recommended and the Secretary of Commerce has approved a conservation and management measure to allow the vessel to be used in fisheries under its authority.

The Council reviewed a version of this analysis in December 2011, and made modifications to the problem statement and alternatives. In addition to the status quo, there are two alternatives that are considered. Alternative 2 would limit the MLOA adjustment to those LLP licenses that have an MLOA of less than 150', and would increase the MLOA for each of these LLP licenses by 20%, not to exceed 150'. Under this alternative, 17 LLP licenses would be affected. Alternative 3 would remove the constraint represented by the MLOA for all 37 freezer longline LLP licenses, and would also authorize vessels named on these licenses to receive a certificate of documentation as large vessels under the MARAD regulations. Under both Alternatives 2 and 3, two options would regulate whether a vessel that is named on one of the eligible LLP licenses, and is subsequently replaced, may be used in another Alaska groundfish or crab fishery. Additional options under Alternative 3 would set a maximum length for replacement vessels at 220' LOA, or require that the LLP license's MLOA still be applicable when the LLP is used in the BS or AI pot cod fishery.

INITIAL REVIEW DRAFT

**REGULATORY IMPACT REVIEW/
INITIAL REGULATORY FLEXIBILITY ANALYSIS**

For a proposed Amendment to the
Fishery Management Plan for the Groundfish Fishery of the Bering Sea
and Aleutian Islands

**Adjustment of the MLOA on BSAI
Freezer Longline LLP Licenses**

(previously referred to as a Vessel Replacement action)

May 17, 2012

North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501
Tel: (907) 271-2809

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EXECUTIVE SUMMARY

This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) to change criteria to allow owners of Bering Sea / Aleutian Islands (BSAI) freezer longline (hook-and-line catcher processor) vessels that fish for Pacific cod, to replace or rebuild their vessels to a length greater than that specified under the restrictions of the License Limitation Program (LLP) and the American Fisheries Act (AFA). Specifically, the Council proposes, first, to adjust the maximum length overall (MLOA) specified on the License Limitation Program (LLP) license assigned to these freezer longline vessels, to accommodate larger replacement vessels. Originally implemented in 2000, each LLP license is endorsed for management areas, catcher vessel and/or catcher processor operation type, and the Pacific cod fixed gear target fishery, and specifies an MLOA for licensed vessels. The MLOA for the license was based on the length of the vessel initially receiving the license.

Secondly, the Council also proposes to allow freezer longline replacement vessels that exceed 165 feet in length, or more than 750 gross tons, or with engines capable of producing more than 3,000 shaft horsepower to enter the groundfish fishery. Regulations at 46 U.S.C. 12106(c)(6) limit vessels greater than 165 feet in length, or more than 750 gross registered tons, or with engines capable of producing more than 3,000 shaft horsepower from entering fisheries unless the vessel carried a fisheries endorsement prior to September 25, 1997, or the Council has recommended and the Secretary of Commerce has approved a conservation and management measure to allow the vessel to be used in fisheries under its authority.

Problem Statement

The Council revised the problem statement for this action at the December 2011 meeting, as follows:

Vessel length restrictions, included with LLP licenses and the AFA, established to maintain fleet capacity, inhibit the BSAI freezer longline fleet from replacing or rebuilding their vessels. Modifying or removing vessel length restrictions for BSAI freezer longline vessels to allow owners to rebuild or replace their vessels with larger vessels would allow for improved vessel safety, meet international class and loadline requirements that would allow a broader range of onboard processing options, and improve the economic efficiency of their vessels.

Description of the Alternatives

In December 2011, the Council approved the following alternatives and options for this action.

Alternative 1: No Action. Under this alternative, the BSAI Pacific cod hook and line catcher processor vessel length, horsepower, and tonnage restrictions currently in place would continue to apply.

Alternative 2: For those LLP licenses with catcher processor and hook-and-line Pacific cod endorsements for the BS or AI, with an MLOA of less than 150', increase the MLOA of the LLP license 20 percent, not to exceed a MLOA of 150'.

Option 2.1: Any vessel replaced under this program would not be eligible to be designated on an FFP or an LLP.

Option 2.2: Replaced vessels may not be used to replace other BSAI hook and line catcher processor vessels.

Alternative 3: The MLOA requirements on LLP licenses with catch processor and hook-and-line Pacific cod endorsements for the BS or AI would not apply and the Council recommends that vessels named on these LLP licenses be authorized for use in the EEZ under the

jurisdiction of the North Pacific Fishery Management Council, which is intended to clarify that these vessels are eligible to receive a certificate of documentation consistent with 46 U.S.C. 12102(c) and MARAD regulations at 46 C.F.R. 356.47.

Option 3.1: Any vessel replaced under this program would not be eligible to be designated on an FFP or an LLP.

Option 3.2: Replaced vessels may not be used to replace other BSAI hook and line catcher processor vessels.

Option 3.3: Any replaced vessel may not exceed 220' LOA.

Option 3.4: The MLOA requirements on LLP licenses with catcher processor and pot cod endorsements would continue to apply when the LLP is used in BS or AI fishery pot cod fishery.

Alternatives 1, 2, and 3

Three alternatives, including no action, are included in this analysis. Under Alternative 1, the no action alternative, freezer longline vessel length restrictions would continue to apply. Vessel owners can currently replace their vessels at any time, and move their LLP license to the replacement vessel, so long as the vessel length does not exceed the MLOA of the LLP license with which the vessel is used. In addition, freezer longline vessels that are (1) greater than 165 feet in length, (2) exceed 750 gross tons, or (3) 3,000 shaft horsepower or greater, which do not already have a federal fisheries endorsement, cannot receive a federal fisheries endorsement, and, therefore, cannot be used to replace an existing BSAI freezer longline vessel.

Alternative 2 would adjust the MLOA on all qualifying LLP licenses upwards by 20 percent, although not to exceed 150' MLOA. In order to qualify, the LLP license must have a Pacific cod hook-and-line catcher processor endorsement for the Bering Sea or Aleutian Islands, and an MLOA of less than 150'. Under this alternative, 7 LLP licenses would have their MLOA increased from 124' to 149', and 10 LLP licenses, with a MLOA between 125' and 149', would have their MLOA increased to 150'. Although the criteria for qualifying for this proposed change rely on whether an LLP license is endorsed for fishing Pacific cod, the change in MLOA appertains to the groundfish license, and therefore affects a vessel's participation in any groundfish target fishery. FMP and regulatory amendments would be required to implement this alternative.

Under Alternative 3, the MLOA on the 37 qualifying LLP licenses would not change, however, the restriction represented by the MLOA would be removed. In order to qualify, the LLP license must have a Pacific cod hook-and-line catcher processor endorsement for the Bering Sea or Aleutian Islands. Under this alternative, these 37 LLP licenses could be used on a vessel of any length. As with Alternative 2, this alternative proposes a change to the groundfish LLP license, and is not specific to a particular target fishery. Also, FMP and regulatory amendments would be required to implement this proposed change. Alternative 3 would also establish that any vessel named on a qualifying LLP license is eligible to receive a certificate of documentation for a federal fisheries endorsement, consistent with regulations at 46 U.S.C. 12102(c). The issuance of fishery endorsements, as regulated by 46 C.F.R. 356.47, is tasked to the Department of Transportation Maritime Administration (MARAD). The statement of eligibility would be established in the FMP (i.e., through an FMP amendment), which would be referenced by MARAD when issuing a certificate of documentation.

Additionally, under each alternative, the Council has identified options. For each alternative, the Council may choose some or all of the relevant options. The options are described below.

Replacement vessel options under Alternatives 2 and 3 – Options 2.1, 2.2, 3.1, 3.2

Alternatives 2 and 3 both have two identical options that impose restrictions on how vessels that are named on the qualifying LLP licenses may be used once replaced. Under Option 2.1, if the vessel that is named on a qualifying LLP license is replaced, the replaced vessel may not be designated on any other Federal Fisheries Permit (FFP) or LLP. That is, the replaced vessel may no longer be used for groundfish or crab fishing in the BSAI or the Gulf of Alaska Federal fisheries. Option 2.2 also restricts how the vessel that is named on a qualifying LLP license is used when it is replaced, by requiring that the replaced vessel not be used to replace another vessel associated with a qualifying LLP license. That is, a replaced vessel could not be used to replace a different vessel within the freezer longline sector. Although the Council could choose both options to Alternative 2, Option 2.2 is subsumed in Option 2.1.

Under the options as written, the agency would need to implement a tracking system for the qualifying LLP licenses under either Alternative 2 or Alternative 3, implemented with one of these options. The vessel that is associated with the LLP license on the effective date of the amendment would be considered the original vessel, and if the LLP license is moved to a different vessel, it would be considered a replacement vessel. NMFS must then track both the original vessel, and any replacement vessels that are again replaced, to ensure that they are no longer used as a BSAI groundfish hook-and-line catcher processor (Options 2.2, 3.2) or no longer designated on any groundfish or crab FFP or LLP.

The Council may wish to consider whether their intent for these provisions is met with this language. Under these options as written, the Council would be imposing very restrictive conditions on the LLP licenses that are affected by these alternatives. The LLP would be linked with the vessel on which it is used at the effective date of the amendment, and if the LLP is moved to a different vessel, the original vessel will no longer be eligible to be used either in the sector (Option 2.2, 3.2), or in the groundfish or crab fisheries (Option 2.1, 3.1). This would apply to any movement of an LLP from one vessel to another, for whatever reason (e.g., a newly-built replacement vessel entering the fishery, a reorganization of LLP licenses among multiple vessels owned by a single company, or an LLP holder choosing to exit the Pacific cod fishery).

The Council may have intended that this provision only apply to vessels that are replaced with newly-built (or rebuilt) vessels. This distinction is not possible with the language as written, however, because the action alternatives modify LLP licenses, and the options restrict vessel usage. In order for the options to work with the alternative, their proposed restriction needs to be interpreted relative to the LLP license.

The Council should also consider whether these options meet the Council's problem statement. The intent of this action is to facilitate vessel replacement to improve both vessel safety and economic efficiency of vessels. It may be that the operations that choose to build new vessels are not those that are the least efficient or safe. In that case, by allowing those replaced vessels to replace yet other vessels in the fishery, the Council would be promoting safety and efficiency across a broader range of the fleet.

At the June meeting, the Council may wish to articulate specifically what its intent is with the vessel replacement provisions. This could then be used as a basis to identify the best regulatory option to meet this intent.

Option 3.3 under Alternative 3 – maximum size limit

Option 3.3, under Alternative 3, would set a maximum size limit for vessels associated with the 37 qualifying LLPs. The LLP could not be used with a vessel exceeding 220' LOA. **Administratively, if the Council chooses both Alternative 3 and Option 3.3, it would be more straightforward to re-designate the MLOA on qualifying licenses as 220'.** The implementation of Alternative 3 without this

option will require NMFS to develop a tracking system for the 37 qualifying LLPs, to exempt them from the constraints of the MLOA. Implementing Option 3.3 with Alternative 3, as written, will also require NMFS to develop a separate tracking system for these LLPs, constrained by the maximum vessel length. The same end can be achieved through the existing LLP management system, without any additional administrative burden, if the Council accedes that the implementation of Alternative 3 with Option 3.3 can be achieved through changing the MLOA on qualifying licenses.

Option 3.4 under Alternative 3 – Pacific cod pot gear endorsement

Option 3.4 limits the proposed change in Alternative 3 with respect to qualifying LLP licenses that also have a Pacific cod pot gear catcher processor endorsement. Under Alternative 3 with this option, the restriction represented by the LLP license's MLOA would be removed for all groundfish fishing activity, except when the vessel is fishing in the Bering Sea or Aleutian Islands pot cod fishery, when the LLP license's MLOA restriction will be enforced. Three of the 37 qualifying LLP licenses under Alternative 3 also have a Pacific cod pot gear catcher processor endorsement.

If the Council chooses Alternative 3, Option 3.3, and Option 3.4 simultaneously, the suggestion discussed under Option 3.3 above, to streamline the administrative implementation of the alternative and Option 3.3 together, is problematic. Under Option 3.4, the original MLOA is needed in order to restrict vessels that are fishing in the BSAI Pacific cod pot fishery. In the case that the Council recommends Alternative 3 with both Options 3.3 and 3.4, NMFS suggests that the Council consider adding a provision that would require LLP holders to make a one-time election of whether to retain their original MLOA, which would allow them to continue fishing in the Pacific cod pot fishery but would limit them to their original MLOA in terms of vessel replacement, or whether to increase the MLOA on their LLP to 220' but thereby surrendering their Pacific cod pot gear catcher processor endorsement. Additionally, if the Council chooses to include this provision, NMFS recommends that there be a time limit associated with the LLP holder's choice.

Potential Effects of the Alternatives

Alternative 1, the status quo alternative, will likely continue to present an impediment to vessel replacement for the freezer longline fleet. While some vessel owners will still choose to build replacement vessels, overall the alternative will limit improvements in vessel safety, processing efficiency, hold design, and engine efficiency for the fleet.

Alternative 2, relative to status quo, provides an opportunity for holders of freezer longline LLP licenses to receive an adjustment to their MLOA, to either 149' or 150' LOA. This would give those LLP holders the opportunity to replace existing vessels with somewhat larger ones. Having this ability may improve production efficiency, while at the same time allow for increased vessel safety. At the same time, the limitations on vessel replacement length for this alternative could limit the incentive for vessels to take advantage of vessel replacement, if improvements in economic efficiency are insufficient to justify the cost of a new vessel.

Alternative 3, relative to the other alternatives, provides the greatest opportunity for owners of freezer longline vessels to replace their vessels with larger vessels. The absence of vessel length restrictions allows vessel owners to design more efficient and safer replacement freezer longline vessels. While by regulation the vessel length would be unrestricted, there appear to be efficiency limitations that would likely limit vessel length in replacement vessels. An unrestricted replacement vessel program could allow some expansion of effort into other current fisheries and unperceived future fisheries, but this factor alone is unlikely to create a sufficient incentive for vessel owners to incur the cost of a replacement vessel.

6-10-12

MLOA FLL problem statement

~~Vessel length restrictions, included with LLP licenses and the AFA, established to maintain fleet capacity, inhibit the BSAI freezer longline fleet from replacing or rebuilding their vessels. Modifying or removing~~ Vessel length restrictions on LLP licenses and in the AFA for BSAI freezer longline vessels limit the ability for ~~to allow~~ owners to rebuild or replace their vessels with larger vessels. Providing this ability would allow for improved vessel safety, meet international class and loadline requirements that would allow a broader range of onboard processing options, and improve the economic efficiency of their vessels.

PPA act 3
inc 3.3 & 3.4
(AP MLOA)



June 2012 NPFMC

Agenda C-5(b)

June 2012

Adjustment of the MLOA on BSAI, Freezer Longline LLP Licenses

Chairman Olson and Council Members,

I am requesting that the *Adjustment of the MLOA on BSAI, Freezer Longline LLP Licenses* package be released to the public and that the package be brought back for final action by the Council at the October 2012 meeting following the AP motion on this issue.

I am going to follow the PPA that the AP approved by a vote of 19-1 I will address quickly point by point.

Alternative and Options with AP Requested Preliminary Preferred Alternative noted

Problem Statement

Vessel length restrictions, included with LLP licenses and the AFA, established to maintain fleet capacity, inhibit the BSAI freezer longline fleet from replacing or rebuilding their vessels. Modifying or removing vessel length restrictions for BSAI freezer longline vessels to allow owners to rebuild or replace their vessels with larger vessels would allow for improved vessel safety, meet international class and loadline requirements that would allow a broader range of onboard processing options, and improve the economic efficiency of their vessels.

Alternative 1: No Action. Under this alternative, the BSAI Pacific cod hook and line catcher processor vessel length, horsepower, and tonnage restrictions currently in place would continue to apply.

Alternative 2: For those LLP licenses with catcher processor and hook-and-line Pacific cod endorsements for the BS or AI, with an MLOA of less than 150', increase the MLOA of the LLP license 20 percent, not to exceed a MLOA of 150'.

Option 2.1: Any vessel replaced under this program would not be eligible to be designated on an FFP or an LLP.

Option 2.2: Replaced vessels may not be used to replace other BSAI hook and line catcher processor vessels.

~~PPA Alternative 3:~~ The MLOA requirements on LLP licenses with catch processor and hook-and-line Pacific cod endorsements for the BS or AI would not apply and the Council recommends that vessels named on these LLP licenses be authorized for use in the EEZ under the jurisdiction of the North Pacific Fishery Management Council, which is intended to clarify that these vessels are eligible to receive a certificate of documentation consistent with 46 U.S.C. 12102(c) and MARAD regulations at 46 C.F.R. 356.47.

Option 3.1: Any vessel replaced under this program would not be eligible to be designated on an FFP or an LLP.

Option 3.2: Replaced vessels may not be used to replace other BSAI hook and line catcher processor vessels.

~~Option 3.3: Any replaced vessel may not exceed 220' LOA.~~

~~PPA Option 3.3:~~ The MLOA on LLP licenses with catch processor and hook-and-line Pacific cod endorsements for the BS or AI would be modified to 220' LOA.

~~Option 3.4: The MLOA requirements on LLP licenses with catcher processor and pot cod endorsements would continue to apply when the LLP is used in BS or AI fishery pot cod fishery.~~

~~PPA Option 3.4:~~ Owners of LLP licenses with catcher processor and pot cod endorsements will have 36 months from the implementation of this action to either surrender the pot cod endorsements and receive a LLP licenses at 220' LOA or the current LLP length restriction would continue to apply.

Thank you,



Kenny Down
Executive Director
Freezer Longline Coalition

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-5(b) FLL MLOA adjustment

NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1 Kenny Down	Freezer Longline Coalition
2 DAVE LITTLE / Joel Peterson	
3 Julie Miller	FIU Kemaque
4 Richard Hummel	Alaskan Leader
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.