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September 27, 2016

Mr. Dan Hull, Chairman
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

RE: C-5: Shortage of Fixed Gear Lead Level 2 Observers

Dear Chairman Hull:

The Freezer Longline Coalition (FLC) appreciates the Council's consideration of a discussion paper on Lead Level 2 (LL2) observers on fixed gear vessels. A long-term, sustainable solution to this problem is needed to resolve this concern for our fleet. FLC members appreciate the work to develop this discussion paper and asks this agenda item move forward for analysis with recommendations incorporated from the Observer Advisory Committee (OAC). We wish to submit the following comments for consideration by the Council.

About FLC

The FLC represents the owners and operators of over 30 U.S.-flag vessels that participate in the freezer longline sector of the Pacific cod fishery in the BSAI. FLC member vessels range in size from approximately 110 to 191 feet with a gross tonnage of approximately 140 to 1400 tons. The mission of the FLC is to promote public policy that facilitates the sustainable and orderly harvest of Pacific cod and other groundfish species. All members of the FLC who participate in the BSAI Pacific cod fisheries are also members of the Freezer Longline Conservation Cooperative (FLCC), a voluntary cooperative established in 2010. FLCC and its members work collaboratively with NMFS to ensure the efficient and responsible harvest of the Pacific cod quota allocated to the sector, including maximizing optimum yield in the fishery and minimizing bycatch of other species. FLCC has been a leader in efforts to reduce bycatch and promote more sustainable fishing practices in the BSAI.

Background

The FLC and observer providers requested this discussion paper from Council to address a shortage of LL2 observers for our fleet, resulting in instances of our vessels being stranded at port awaiting an observer. The shortage of LL2 fixed gear observers has long been a concern of the FLC (see attachment) and remains a major issue for our fleet. To temporarily alleviate the shortage, our fleet has paid to voluntarily deploy second observers on our vessels to facilitate training needed for LL2 certification and has

worked with the Observer Program to identify non-regulatory measures to increase the pool of observers. The intent of this paper is to develop a long-term solution for this concern.

As detailed in the attachment, the FLC has been raising concern about a potential LL2 shortage since 2011, before the issuance of the 2012 Final Rule. At that time, our fleet had 100% observer coverage, with one observer (of any level) deployed on a vessel for each trip. In describing the requirements established in the Final Rule for observer coverage on freezer longline vessels, the discussion paper states that: *“The existing coverage requirement options were a compromise between the industry and NMFS.”* However, this assertion does not reflect the analysis performed by NMFS ahead of the 2012 Final Rule, including an EA/RIR on the requirement options. NMFS statements in the Final Rule (September 26, 2012) on observer requirements for BSAI CP H&Ls (below) make clear that NMFS determined that either option would provide the necessary data and that mandating a second observer for training purposes was not necessary.

Final Rule (9/26/2012):

- *“Members of the subsector who intend to fish for Pacific cod in the BSAI or to conduct groundfish CDQ fishing in the upcoming calendar year will be required to select one of two monitoring options: carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated scale to weigh Pacific cod before it is processed. ”*
- *“NMFS has examined both options and determined that either option will improve catch accounting on the freezer longliners and provide the data needed to properly manage the Pacific cod and groundfish CDQ fisheries.”*
- *“Either monitoring option will result in quality data and enable NMFS to estimate Pacific cod catch in the longline C/P sector.”*
- *“Our [NMFS] analysis indicates that a sustainable supply of lead level 2 observers should be available in the short, as well as the long, term. NMFS does not believe that mandating a second observer for training purposes is necessary.”*
- *“The level 2 requirement ensures that observers have experience at sea; the “lead” requirement ensures that they have had experience with longline or pot gear and that, having taken at least two cruises, they have experience with various fixed-gear operations.”*
- *“The lead level 2 requirement is an essential component to the suite of monitoring tools created to manage the voluntary cooperative. Without this component the monitoring program will not function as intended.”*
- *“Changes from the Proposed Rule: No changes to the regulations were made based on public comment.”*

The 2012 Final Rule also included specific assurances that there would be a sufficient pool of fixed gear LL2 observers to ensure that freezer longliners would not be stranded in port due to a shortage of observers. NMFS suggested that a key component to facilitating LL2 observers would be the ability to train observers for use on our fleet through the restructured partial observer program.

Final Rule (9/26/2012):

- *“Comment 2 (note: submitted by FLC): The increase in the total number of lead level 2 observers needed to cover the BSAI freezer longline fleet is unsustainable and, in the long term, will lead to a shortage of qualified observers... Response: NMFS disagrees.”*
- *Section 1.3.4 of the EA/RIR describes other ways observers can gain lead level 2 experience. While opportunities for obtaining lead level 2 qualifications within the freezer longline fleet will be limited, observers may gain experience aboard the fixed gear catcher vessels, vessels in the affected fleet that choose to “opt out” of fishing under the program, freezer longliners that fish only in the GOA, pot catcher vessels, and pot catcher/processors.”*
- *“The EA/RIR highlights that the restructured observer program will provide the most new opportunities for observers to acquire lead level 2 certification. In addition, through this action NMFS reduced the number of sampled sets required for lead level 2 certification by half. Both of these factors increase the likelihood that there will be sufficient lead level 2 observers in the long term. **The analysis suggests that it is likely that the number of qualified lead level 2 observers will exceed the number required in any given year.**”*

However, these and other measures to prevent a shortage were either never realized or not effective enough to fully address the concern, resulting in a need to develop a long-term solution to this shortage.

Recommended Council Action

The FLC recommends that this agenda item move forward for analysis. The discussion paper illustrates that a shortage of fixed gear LL2 observers exists both in terms of number and availability of qualified observers. The OAC, at its meeting in September, concurred that there continues to be a concern about a shortage of LL2 fixed gear observers and recommended that the discussion paper move forward for further consideration. We support the OACs comments.

There is a shortage of LL2 observers in both number and availability: The shortage of LL2 observers is evident in the discussion paper in terms of the declining number of qualified LL2 observers as well as their availability.

- Table 2 (p. 14) shows that the number of all qualified LL2 observers in full coverage has declined **-22%** from 2012 to 2015.

- Table 3 (p. 14) shows the total number of LL2 observers deployed on CP H&L has also declined **-18%** from 2012 to 2015. Effort has not decreased in the BSAI CP H&L fleet, so the implication is that the existing pool of LL2 observers are doing more deployments.
- Table 4 (p. 14) illustrates the large difference between the number of qualified LL2 observers and the **availability** of LL2 observers for one company. On average (2012-2015), the number of available LL2 observers is about half (**53%**) of the number of qualified LL2 observers.
- In Table 4, the number of qualified LL2 observers for this same company declined **-33%** from 2012 to 2015 and the number of available observers declined **-18%** from 2012-2015.

Options: The FLC supports the OAC recommendation to move ahead with Options 1, 2, 4 and 6 proposed in the discussion paper. Of the options, the FLC has most strongly advocated for Option 1, allowing the use of a non-fixed gear LL2 observer or a non-LL2 fixed gear observer in cases when a vessel is stranded in port, but each of the other options supported by the OAC warrant additional consideration. The FLC concurs with dropping Options 3 and 5. Option 3, to utilize pot CV vessels to train observers, does not appear to have the potential to provide noticeable relief to the observer shortage given the small amount of coverage for the vessels in the partial coverage program, while Option 5, to encourage the approval of AIS as a full coverage provider, is a moot point with NMFS' recent action to approve AIS' application.

The FLC submits that one reason why the proposed options warrant additional review is because the discussion paper offers little substantial consideration of the options beyond the Observer Program's stated reservations about experience and training described in Section 5 of the paper. These options include all of those put forward by Council in its October 2015 motion. The FLC has concerns with this critique of the options, as Section 5 suggests that the existing requirements for LL2 certification are no longer adequate. Rather, it can be surmised from Section 5 that the Observer Program wishes to move the goalposts on the requirements for LL2 certification. Such action would make it more difficult to grow the pool of LL2 observers and raises questions about the qualifications of existing LL2s.

The only option in which Section 5 was not cited was Option 4, where the cost of the second observer deployed for training purposes would be paid for by NMFS. The paper simply describes this option as "complex" and "one that would raise many policy and logistical questions," a rationale that makes its own case for additional consideration.

In contrast to the consideration of the Council options, a large portion of the discussion paper (Section 5 and Appendix B and C) appears to be devoted to groundwork supporting a new option put forth by the Observer Program (Option 6) and more generally the purported need for two observers on each freezer longline vessel. This new option is not clearly defined in the discussion paper. On p. 26, the option is described as a "change regulations to allow freezer longline vessels with flow scales to

choose between a single LL2 observer or two level 2 observers.” However, the text that immediately follows this description (p. 26-27) states that two observers, including one LL2 would be required on board at all times for freezer longliners equipped with flow scales, with industry paying for the additional observer.

At the OAC, the Observer Program representatives clarified that Option 6 is to provide freezer longliners the option to either deploy one fixed gear LL2 observer or two Level 2 observers on a vessel. It was also stated by Observer Program representatives that (pending further changes) vessels would be able to opt for one option or the other on a trip-by-trip basis, something not specified in the paper. This option, as clarified by the Observer Program, is more reasonable than requiring two observers at all times, but nonetheless raises a number of questions, including whether or not it would be any easier to secure two Level 2 observers for a vessel rather than one LL2 observer. If not, this proposal would do little to alleviate the existing concern about stranded vessels. We believe this option warrants additional consideration and support the OACs proposal to also consider the use of a Level 2 and a Level 1 observer in lieu of one LL2. We would further suggest review of deploying two Level 1 observers in lieu of an LL2, which would give the fleet the most flexibility to ensure vessels are not stranded.

Experience and training: The FLC is puzzled by statements made by the Observer Program in Section 5 of the discussion paper that observer experience on CV fixed-gear vessels is “*not adequate*”¹ for a LL2 fixed-gear endorsement deployment on a CP H&L. This sentiment was echoed by other OAC members at the committee’s September meeting. This is one of the current methods for training LL2s and would seem to suggest that many existing LL2s are not qualified. Experience gained on CV vessels prior to deployment on CP vessels has been a part of the Observer Program for the last twenty years. These statements by the Observer Program on the newly perceived inadequacy of experience on CV vessels would also seem to suggest that all the observers in the partial coverage sector could not ever be deployed in the full coverage sector. This raises serious questions about what benefit, if any the addition of AIS as a full coverage provider will have on addressing the LL2 shortage, as a key element of the assistance they would provide is their reported ability to train large numbers of LL2 observers through their partial coverage contract.

The FLC also questions the inclusion in the discussion paper of the responses to an Observer Program survey of observers (generated from the e-mail notice in Appendix B) which was sent to 480 observers with an underwhelming 11 responses (2.3% response). The FLC believes it is important and worthwhile for the Observer Program to collect feedback from observers on their experiences on all fleets. We likewise welcome input that can help facilitate a better work environment for observers on our vessels. However, the small sample size of responses provides a less-than-comprehensive look at observer sentiment. Additionally, the survey makes little reference to the actual

¹ P. 15, Discussion Paper, “*The Observer Program is concerned that even the current experience requirements for a fixed gear LL2 endorsement, which allows prior experience on longline catcher vessels or vessels using pot gear, are not adequate to properly prepare a single observer to be deployed for the first time on a freezer longline vessel.*”

question at hand in the discussion paper, i.e. the availability of fixed gear LL2 observers. Rather, the survey directs respondents to background information that includes the 2012 Final Rule and the June 2016 Council newsletter, which makes no reference to the LL2 discussion paper. The survey, whether intentional or not, appears to be more geared toward “fishing” for responses that might support a revisiting of the 2012 Final Rule and a subsequent proposal to require two observers on vessels. Only one response directly addresses the shortage of LL2 fixed gear observers.

The issue of the shortage of LL2 fixed gear observers has long been a concern by the FLC and we request this analysis move forward. Thank you for your consideration.

Sincerely,



Chad I. See
Executive Director
Freezer Longline Coalition

Chronology:

- **Sept 2011:** Observer provider companies’ letter to NPFMC on the small size of the pool of LL2 fixed gear observers; the difficulty in maintaining that pool; and questioned the need for LL2 on a vessel with a flow scale.
- **May 2012:** Observer provider companies’ follow up letter to NMFS stating that the selection of a single company for partial coverage will be an impediment for full coverage companies to train fixed gear LL2s.
- **July 2012:** FLC comment letter on need for LL2 on CP H&L with a scale; the size of the pool of available observers is depleted (and will result in shortages with economic consequences for vessels are unable to leave the dock); and the limited ability to train new LL2 observers.
- **July 2012:** Comment letter from observer provider. NMFS has ignored previous comment letters from observer providers regarding LL2. NMFS stating that the problem can be solved by just paying higher wages is simplistic and reveals NMFS lack of understanding of observer provider companies.
- **July 2012:** Comment letter (WACDA) on the need for LL2; availability; and potential for increased costs.
- **September 2012: Final Rule:** NMFS modified equipment and operational requirements for CP H&L.
- **January, 2013:** NMFS implemented the restructured funding and deployment systems of the Observer Program.
- **January 2014:** Letter from observer provider companies to NPFMC on the shortage and declining population of LL2s in the last two years. Warns that boats

- will be tied to the dock. Provides suggestions for speeding up training and debriefing between trips.
- **February 2014: OAC:** *“OAC discussed the letter and proposal from the observer providers and noted that such a proposal would need to be implemented as a regulatory change and that this would not be a quick solution. The Committee recognized that if a lead level 2 observer is not available, the vessel experiences a hardship in that they would be unable to go fishing, and identified deploying a second inexperienced observer on some vessels as an interim solution. The OAC noted in their minutes that the Freezer longline sector is unwilling to take on this role, because of the cost (they have already made significant investments in flow scales in order to be able to take only one observer), and because of natural observer attrition, they would need to be training new observers in perpetuity.”*
 - **May 2014:** Letter from observer providers to Observer Program noting shortage of LL2s.
 - **June 2014:** OAC *“reviewed information provided in the Annual report about the availability of LL2 observers and requested additional detail about the number of newly certified LL2 observers in the partial coverage category since 2013.”*
 - **August 2014:** Letter from Saltwater to Ken Tippet, Coastal Villages stating that the vessel will have to cease fishing and cut a trip short when the observer reaches their 90th day (and lack of available observers to deploy). Cites issues with new requirements, small pool size, and diminished training opportunities.
 - **August 2014:** FLC letter to NMFS citing vessels losing days fishing in 2014 due to LL2 shortage (F/V Arctic Prowler, 3 days; F/V Clipper Endeavor, 5 days; Clipper Surprise, 4 days; F/V Lilli Ann, 6 days; and Blue North in 2013). FLC requests leniency on enforcement of LL2 requirement (i.e. use a regular observer if a LL2 is not available). Cites previous comment letters to NMFS on LL2 need and supply.
 - **September 2014:** NMFS response to FLC: *“NMFS does not adopt non-enforcement polices”*. NMFS believes that the existing pool of LL2s is still sufficient (as NMFS stated in the final rule).
 - **September 2014: OAC:** *“recommended that a discussion paper about the LL2 issue be added as priority on the list of observer Analytical priorities.....The OAC also provided some direction about what should be considered in a discussion paper to identify potential regulatory change to address the issue of LL2 observers.”*
 - **October 2014:** FLC raises LL2 issue at Oct NPFMC under Observer ADP (along with observer companies). Council motion on regulatory and non-regulatory actions with a future discussion paper and a work group. *“In June 2014, the Council tasked staff to prepare a discussion paper to evaluate regulatory and non-regulatory solutions to alleviate industry concern about the high potential for a shortage of fixed-gear lead level 2 (LL2) observers for catcher/processors using hook-and-line gear in the BSAI.”* Discussion sits in three-meeting outlook as an unscheduled item for two years
 - **November 2014:** Work Group meeting on non-regulatory and regulatory solutions.
 - **December 2014: NPFMC:** Report of work group meeting.

- **June 2015:** *“OAC and the Council reviewed information provided by NMFS about the availability of LL2 observers in the 2014 Observer Program Annual Report.”*
- **September 2015:** *“NMFS presented the “Lead Level 2 Update” to the OAC recommended that regulatory solutions to the LL2 issue be evaluated and proposed that the “priority for regulatory options should be to address how to get observers the training they need for LL2 certification, rather than allowing inexperienced observers in the fleet.”*
- **October 2015:** Motion in staff tasking identifying options to be included in the discussion paper.
- **March 2016:** AIS applies to be a full coverage observer provider
- **June 2016:** LL2 discussion paper scheduled for OAC meeting Sept 2016 and NPFMC Oct 2016 meeting. Council motion to delay action on AIS permit.
- **August 2016:** AIS application approved.
- **September 2016: OAC:** LL2 shortage problem still exists; move discussion paper forward.
- **October 2016: NPFMC:** C 5 LL2 Discussion Paper