


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Executive Director

DATE: September 25, 2012

SUBJECT: FLL MLOA Adjustment (formerly Vessel Replacement)

ESTIMATED TIME 6 HOURS (all C-5 items)
--

**ACTION REQUIRED**

Final action on 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 early September 2012; an executive summary is attached as Item C-5(c). Specifically, the Council considers 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 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 an initial review draft of this analysis in June 2012, and made modifications to the problem statement and alternatives. There are two alternatives to the status quo considered, and accompanying options. The Council also selected a preliminary preferred alternative (PPA). Under the PPA, which is represented by Alternative 3 plus Options 3.3 and 3.4, the MLOA for all 37 freezer longline LLP licenses would be adjusted to 220', and the FMP would be amended to authorize vessels named on these licenses to receive a certificate of documentation as "large vessels" under the MARAD regulations. However, for three qualifying LLP licenses that are also endorsed for BSAI or GOA pot cod fisheries, the LLP holder would have 36 months to decide whether to accept the larger MLOA and relinquish the pot cod endorsements, or keep the original MLOA and retain the pot cod endorsements.

## 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 registered length or 750 gross registered tons, or with engines capable of producing more than 3,000 shaft horsepower, to enter the groundfish fishery. Regulations at 46 U.S.C. 12113(d) limit vessels greater than 165 feet in registered 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 June 2012 meeting, as follows:

*Vessel length restrictions on LLP licenses and in the AFA, for BSAI freezer longline vessels, limit the ability for 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.*

### **Description of the Alternatives**

In June 2012, the Council revised the alternatives and options for this action, as follows. The Council also identified a preliminary preferred alternative (PPA), which is also identified.

**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 an 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: (PPA)** The MLOA requirements on LLP licenses with catcher 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. 12113(d) 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 LLP, except on LLP licenses with catcher processor and hook-and-line Pacific cod endorsements for the BS or AI.

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

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

Option 3.4: **(PPA)** 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 license at 220' MLOA or the current LLP length restriction would continue to apply.

### **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 (1) are greater than 165 feet in registered length, (2) exceed 750 gross registered tons, or (3) have engines capable of producing 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 an 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, currently part of the preliminary preferred alternative (PPA), 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. 12113(d). 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.

**Options restricting use of replaced vessels under Alternatives 2 and 3 – Options 2.1, 2.2, 3.1, 3.2**

Alternatives 2 and 3 both have two options that impose restrictions on how vessels that are named on the qualifying LLP licenses may be used, once replaced. Option 2.1 is the most restrictive. 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 (GOA) Federal fisheries. Option 3.1 is similar to Option 2.1, however it relaxes the restriction such that a vessel that is named on a qualifying LLP license may be used on another LLP license that has a catcher processor and hook-and-line Pacific cod endorsement for the BS or AI. That is, the replaced vessel cannot be used for groundfish or crab fishing in the BSAI or GOA fisheries except that it may be used to replace another vessel within the BSAI freezer longline Pacific cod sector. Options 2.2 and 3.2 are identical, and impose a narrow restriction: the vessel that is named on a qualifying LLP license may 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 BSAI freezer longline sector.

Under these options, the agency would need to implement a tracking system for the qualifying LLP licenses and associated vessels 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 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), no longer designated on any groundfish or crab FFP or LLP (Option 2.1), or are only designated on an LLP that has a BSAI catcher processor hook-and line endorsement for Pacific cod (Option 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 license holder choosing to exit the Pacific cod fishery).

**Option 3.3 under Alternative 3 – redesignate all MLOAs at 220'**

Option 3.3, under Alternative 3 (currently part of the preliminary preferred alternative), would redesignate the MLOA on the 37 qualifying LLP licenses to 220' MLOA. Any vessel associated with a qualifying LLP license may be up to 220' LOA.

**Option 3.4 under Alternative 3 – limitation for LLP licenses with Pacific cod pot catcher processor endorsement**

Option 3.4 (part of the preliminary preferred alternative) limits the proposed change in Alternative 3 with respect to qualifying LLP licenses that also have a catcher processor and pot Pacific cod endorsement. Under Alternative 3 with this option, these LLP license holders would be required to make a one-time election of whether to increase the MLOA on their LLP to 220', but thereby surrender their Pacific cod

pot gear catcher processor endorsements<sup>1</sup>; or whether to retain their original MLOA, which would allow them to continue fishing in both the Pacific cod longline and pot fisheries. Three of the 37 qualifying LLP licenses under Alternative 3 also have pot Pacific cod endorsements. These LLP holders would have 36 months from the implementation of this action to make this determination.

### ***Potential Effects of the Alternatives***

Under **Alternative 1**, the status quo alternative, no incentive to accelerate vessel replacement for the freezer longline fleet will be implemented. Vessel replacement is allowed under the status quo, and certain vessel owners have chosen, and will continue to choose, to build replacement vessels. Significant disincentives exist, however, especially for vessels under 125' LOA. In many cases, the cost of a new vessel may not be affordable without the increased production efficiency that could result from constructing a larger vessel. U.S. Coast Guard marine inspectors continue to express serious safety concerns over the material condition and long-term viability of this 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. This alternative affects less than half the BSAI freezer longline fleet, and limitations on vessel replacement length under this alternative could limit the incentive for vessels to take advantage of vessel replacement, if improvements in production efficiency are insufficient to justify the cost of a new vessel.

**Alternative 3**, relative to the other alternatives, provides the most comprehensive 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. There are relatively few opportunities for LLP license holders with unrestrictive MLOAs to fish their larger replacement vessels in other fisheries, as most other available target fisheries for this fleet are already constrained by sector allocations or individual fishing quotas.

---

<sup>1</sup> Note, the Council rewrote this option at the June 2012 initial review. Previously, it was written such that it applied only to LLP licenses endorsed for the BSAI pot cod fishery; the Council's revision has extended the restriction to any catcher processor and pot Pacific cod endorsement, in the BSAI or the GOA.

# PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-5(c) FREEZER Longliner MLOA adjustment

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Kenny Down	Freezer Longline Coalition
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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.