

May 23, 2016

Mr. Chris Rilling
Director – Fisheries Monitoring and Analysis
Alaska Fisheries Science Center
7600 Sand Point Way NE, Bldg. 4
Seattle, WA 98115

Dear Chris,

We are writing to voice our collective concerns regarding the application submitted by AIS, Inc. (AIS) to be permitted as a full coverage provider in the North Pacific Observer Program. Although we realize all applications to become a Permitted Provider must be given full consideration and review by the FMA, the potential entry of AIS, Inc into the 100% full coverage sector would change our current model of deploying observers without fully exploring the long-term implications.

Our current program is the result of 5 years of study, diligent analysis, and input from the public. The Alaska Fisheries NOAA website summarizes this work in the 2nd line of their introduction; *We changed how observers are deployed, how observer coverage is funded, and the vessels and processors that must have some or all of their operations observed.*

We believe the key phrase in this statement is *how observer coverage is funded.*

AIS is not just another provider. AIS has operated in the North Pacific since 2013, recruiting, hiring, training, and deploying observers for the partial coverage program. These operational activities, overhead and profit are 100% funded by the direct federal government contract AIS holds. Permitting AIS as a full coverage provider will create two-tiers of observer providers in the North Pacific. One tier is comprised of a single provider that enjoys a contractual partnership with the government, operates under a separate set of rules and policies, has access to a wide range of vessels and gear types in which to deploy their observers, and who has a government funded revenue stream by which to cover all operational costs and overhead. Entering the full coverage system from this platform would automatically give AIS not only a practical advantage, but an economic one as well. The 2nd tier of providers is comprised of 3 companies who are bound by the constraints of federal regulation and the regulatory process.

In the early days of the restructuring analysis, there was a fair amount of discussion of how to handle these two tiers of providers. How do you mitigate the competitive advantages a partial coverage contract holder would have while also operating in the full coverage “Pay as you Go” observer system? NMFS did put forward some ideas as to how to mitigate those advantages—for instance, requiring partial coverage observers to fully debrief and re-brief from one program into the next, thereby restricting “free-flow” of partial coverage observers between deployment models. These initial attempts to reassure the providers that NMFS would take steps to level the playing field when the time came, required no follow through, because ensuring equity and mitigating advantages turned out to be unnecessary: AIS, an outside contractor with no experience and no permit in the North Pacific, was awarded the contract.

To the question as to why contractors, who in 2012 submitted bids for the partial coverage contract, are now protesting the possibility that AIS may end up in the position they themselves would have occupied had they won the award, it is fair to answer that at the time NMFS had no intention of allowing the potential advantages of such a conflict to go unaddressed.

Through time we understand these advantages include, but are not limited to:

- Gear in the field. NMFS issues gear to AIS field staff in case of emergencies. Other providers are not given this same consideration.
- Separate debriefing stream. In the 2015 Annual Report, NMFS reported that they had reduced the (government paid) partial coverage debriefing wait times from 12 day to 5 days. There was no analysis done of the full coverage debriefing wait times, therefore we must assume there was no equal effort for this sector.
- Briefings and Trainings. The government currently reimburses AIS for training, briefing, and debriefing partial coverage observers. How are those government funded observers equitably deployed into a competitive, full coverage, industry funded system?
- Sharing of Confidential Fisheries Information. Under the direct contract model, NMFS is authorized to treat contracted observer providers like federal employees and “provide them access to confidential fisheries information”. AIS, Inc would be entering into the 100% observer coverage sector with confidential information not available to other providers.
- Sole access to a fleet of small fixed-gear vessels. AIS can quickly qualify its employees as Lead Observers on fixed-gear vessels making short trips. In the Pay as you Go universe, certifying Fixed Gear Leads is a lengthy and expensive process for both the providers and the 100% freezer longliners they cover. If permitted to operate in the full coverage program, AIS receives another government reimbursement for training, this time to produce observers whose qualifications are in short supply in the pay-as-you go sector.

Permitting AIS, Inc as a full coverage provider could be seen as a short term non-regulatory fix to some of the issues and concerns that have stemmed from the restructured observer program (i.e. the supply of longline lead level 2 observers), or as a way to gain efficiencies and address the rising daily rate the government is paying for partial coverage (\$59/day increase over the last 3 years). These motivations are stated on Page 29 of the 2015 North Pacific Groundfish and Halibut Observer Program Annual Report: ***The majority of business is conducted by three of the four NMFS certified observer providers. This pool is down from a high of 10 certified providers in 1991. It is NMFS’s understanding that the pool was reduced due to competition, so it is uncertain if a new provider could be competitive, or if the impact would result in substantial increases in efficiency.***

To reiterate, granting such a permit fundamentally changes the current observer program that observers deploy into and out of, and how that coverage is funded. And the questions that must be answered are more far-reaching than the ability for AIS to compete as full coverage provider. With their overhead covered through their government contract, they will be able to compete, but at what cost to the program and industry? The “substantial efficiencies” that are sought for the partial coverage program could result in greater costs and negative outcomes further down the line. But we won’t really know that unless there is full analysis of what impact adding AIS to the full coverage provider list would be. By choosing AIS for the partial coverage program four years ago, NMFS avoided this analysis then, when the advantages that might benefit the contract holder were speculative. Since then we’ve learned that those advantages are very real and more significant than anyone imagined at the time.

Let us be perfectly clear, we do not object to competition. For decades now we have competed directly with each other, and the result has been a well-respected and cost efficient observer program. Both the industry and NMFS have benefitted from this, and the North Pacific observer program is often touted as

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Mr. Chris Rilling
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the best in the country, if not the world. Our objection is competing on an un-level playing field which, we believe, will diminish the North Pacific observer program over the long term, resulting in increased costs, poorer data, and less flexibility. For this reason we believe the decision to approve or not approve this application should not be rushed. It should be given a full and complete analysis and review, publically vetted, and not considered under the standard, closed door permitting process.

Thank you for your consideration.

Sincerely,



Stacey Hansen
Saltwater Inc



Michael Lake
Alaskan Observers, Inc



Troy Quinlan
Techsea Intl.

cc: James Balsiger, Ph.D, Administrator, Alaska Region
Glenn Merrill, Adminstrator, Sustainable Fisheries
Doug Demaster, Ph.D, Director, AFSC
Chris Oliver, Executive Director; NPFMC
Dan Hull, Chair, NPFMC
Lisa Lindeman, NOAA Alaska GC
Tom Myer, NOAA Alaska GC
Bill Tweit, NPFMC
Craig Cross, NPFMC
Kenny Down, NPFMC
Steve Ignell, Deputy Director, AFSC
Chad See, Executive Director, FLC
Diana Evans, Council Staff, NOAA

May 24, 2016

Via E-mail:

Chris Rilling, Director
National Marine Fisheries Service
Fisheries Monitoring and Analysis Division
7600 Sand Point Way N.E.

Seattle, WA 98115-6349

Dear Chris,

We are writing to address the matter of Lead Level 2 (LL 2) observer certification requirements as well as the broader issue of how to reconcile the long term objectives and needs of the industry in that regard with a more expedient remedy currently being proposed, the certification of AIS, Inc. (AIS) as a provider to the pay-as-you go observer program. The LL 2 certification process has been the subject of correspondence, discussion and study for five years between members of the freezer longline industry, observer providers and NMFS. Our purpose here is to reiterate the need for a viable long-term and comprehensive solution to this problem and bring to your attention our concerns that such a goal should not be considered fulfilled simply by certifying AIS. We are concerned that NMFS may intend to forego council review and the public comment process and expedite the AIS certification as a solution to the LL 2 problem.

First, it is important to understand that all the observer providers in the North Pacific, welcome fair competition including certification of another observer provider, but only through a process that does not unfairly benefit a new observer provider, such as AIS, while unfairly restraining the opportunity of existing observer providers to compete in the North Pacific fisheries that we have served for almost three decades.

There is no dispute that the path to LL 2 observer certification open to AIS is through a restricted process not available to the other observer providers. Since 2011, AIS has provided observers to a fleet of small fixed-gear vessels that no other provider has access to. NMFS requires observers to meet minimum experience requirements before they can earn LL 2 status, but NMFS also defines a set so that an observer who samples a single pot gets credited with the same amount of work as an observer who samples a 12-hour string on a freezer longliner. Consequently, AIS has a built-in ability to produce LL 2 certified observers much more quickly than other providers, and at zero cost to the freezer longline fleet. An LL 2 observer coming from small pot vessels to a freezer longliner for the first time most likely

will have never used ATLAS nor worked around a flow-scale. These LL 2's will displace far more qualified observers who have the misfortune of being employed by companies no longer able to compete for business covering the freezer longline fleet. Given the advantages AIS will have, industry will soon enough have only one provider to turn to to secure LL 2 observers.

NMFS involvement in creating the opportunity available only to AIS through the publicly funded contract – under which the AIS LL 2 observers have obtained their certification – should compel NMFS to take all steps necessary to avoid the appearance of favoring one observer provider over all the others in the industry. Yet by certifying AIS' application through a permitting process not subject to public scrutiny, NMFS would certainly be demonstrating an intent to favor AIS at the expense of the other providers.

As you are aware, 50 C.F.R. § 679.50 sets forth specific requirements for LL 2 endorsements. The North Pacific observer providers have for years attempted to work with NMFS to implement necessary modifications to these requirements that would benefit the freezer longline fleet by creating a viable, long-term supply of LL 2's while at the same time satisfying the agency's concerns about the quality of the data observers collect on these vessels. NMFS has now signaled its intent to bypass the process, certify the application of AIS for short-term benefit, and in so doing will remove competition at the risk of diminishing industry science. There is no precedent for NMFS to favor one observer provider over another and to do so now will have long term consequences for the industry, in no small part by making a mockery of NMFS' oft-stated concerns about data quality.

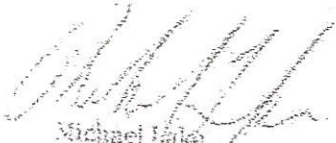
While this letter focuses on LL 2 observers and freezer longliners, it is worth noting that, once certified, AIS will not be limited to providing observers to this fleet. Their advantages in this arena are easy to explain and are unarguable, but AIS' status vis-à-vis NMFS may further benefit them as they pursue contracts in the rest of the pay-as-you go universe. NMFS practices that seem innocuous to an outsider, such as providing a different debriefing path to AIS that has the effect of yielding expedited debriefings, or taking steps to ensure that AIS has the number of seats it needs in a given training, would confer meaningful advantages. We do not intend to provide an exhaustive list of the actual or perceived advantages their special status might produce—we only mean to point out that there is more than one reason that deliberate, careful consideration should be given to their proposed certification.

Approving AIS' application prior to the Region's release of its White Paper discussing solutions to the LL 2 issue would be irresponsible and cynical. The interim modifications to LL 2 qualifications instituted by NMFS over the past several years—reducing the required number of sampled sets to 30, for instance—have bought time, but they in no way constitute a viable, long term solution to the problem, and we expect to see alternative solutions offered when the White Paper is released in October. Should the agency offer up alternative approaches that level the playing field so that all providers can fairly compete to supply LL 2

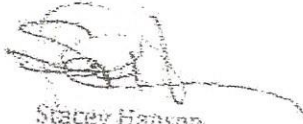
observers to the Freezer Longline fleet, then, and only then, should AIS' certification be considered.

We look forward to working with NMFS to arrive at a comprehensive, fair, and permanent solution to this problem.

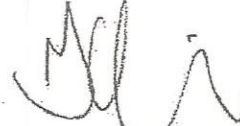
Sincerely,



Michael Wade
Alaskan Observers, Inc.



Stacey Hansen
Saltwater Inc.



Troy Quinlan
Technic Intl.

cc:

James Balsiger, Ph.D - jim.balsiger@noaa.gov
Glenn Merrill - glenn.merrell@noaa.gov
Doug Demaster - doug.demaster@noaa.gov
Lisa Lindeman - lisa.lindeman@noaa.gov
Tom Myer - tom.gcak.meyer@noaa.gov
Dan Hull - danhullak@gmail.com
Chris Oliver - chris.oliver@noaa.gov
Bill Tweit - william.tweit@dfw.wa.gov
Craig Cross - craigc@starboats.com
Kenny Down - kennydown@comcast.net
Steve Ignell - steve.ignell@noaa.gov
Chad See - chadsee@freezerlongline.biz
Diana Evans - diana.evans@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Fisheries Science Center
7600 Sand Point Way N.E. Bldg 4
Seattle, Washington 98115-6349
(206) 526-4000

May 26, 2016

Michael Lake
President, Alaskan Observers, Inc.
130 Nickerson, #206
Seattle, WA 98109

Dear Michael,

Thank you for your letter regarding AIS, Inc.'s application to become a full coverage observer provider in the North Pacific groundfish fisheries. As described in the excerpted regulations at §679.52 below, there is a process for reviewing and evaluating new provider applications. The Regional Administrator is responsible for establishing an observer provider permit application review board, comprised of NMFS employees, to review and evaluate an application. The review board members have been appointed.

As described in the regulations, the review board is responsible for evaluating the completeness of the application, the application's consistency with needs and objectives of the observer program, or other relevant factors. Given the busy schedule preparing for the North Pacific Fishery Management Council meeting in June, the review board has not had an opportunity to review the application, but plans to do so following the June Council meeting. The review board will consider the concerns raised in your letter to the extent that they are consistent with the application review process and evaluation criteria described in regulation.

Thanks again for expressing your thoughts on this matter. Please feel free to contact me if you have any questions or would like any other information.

Sincerely,

A handwritten signature in black ink that reads "Chris Rilling". The signature is written in a cursive, flowing style.

Chris Rilling
Fisheries Monitoring and Analysis Division

Cc: Stacey Hansen
Troy Quinlan
Jim Balsiger
Douglas DeMaster



§679.52 Observer provider permitting and responsibilities.

(a) *Observer provider permit*—(1) *Permit*. The Regional Administrator may issue a permit authorizing a person's participation as an observer provider for operations requiring full observer coverage per §679.51(a)(2) and (b)(2). Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(2) *New observer provider*. An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed at §679.51(c)(3).

(3) *Contents of application*. An application for an observer provider permit shall consist of a narrative that contains the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and other employees. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) *Contact information*—(A) *Owner(s) information*. The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(B) *Business information*. Current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(C) *Authorized agent*. For an observer provider with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(iii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they have no conflict of interest as described in paragraph (c) of this section.

(iv) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider as set out under paragraph (b) of this section, and the arrangements to be used.

(4) *Application evaluation*. (i) The Regional Administrator will establish an observer provider permit application review board, comprised of NMFS employees, to review and evaluate an application submitted under paragraph (a) of this section. The review board will evaluate the completeness of the application, the application's consistency with needs and objectives of the observer program, or other

relevant factors. If the applicant is a corporation, the review board also will evaluate the following criteria for each owner, or owners, board members, and officers:

(A) Absence of conflict of interest as defined under paragraph (c) of this section;

(B) Absence of criminal convictions related to:

(1) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(2) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(C) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(D) Absence of any history of decertification as either an observer or observer provider;

(ii) [Reserved]

(5) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue an observer provider permit to the applicant. If an application is denied, the reason for denial will be explained in the written determination.

(6) *Transferability.* An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph (a).

(7) *Expiration of observer provider permit.* (i) An observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider under this section to the North Pacific groundfish or halibut industry.

From: David Edick aoistaff@alaskanobservers.com
Subject: May 31 Response to Chris Rilling
Date: May 31, 2016 at 4:15 PM
To: Michael Lake mlake@alaskanobservers.com



31 May 2016

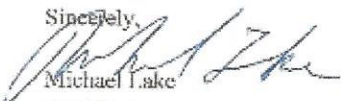
Chris Rilling, Director
National Marine Fisheries Service
Fisheries Monitoring and Analysis Division
7600 Sand Point Way N.E.
Seattle, WA 98115-6349

Dear Chris,

Thanks for responding to our letter regarding AIS and their application for certification in the pay-as-you-go observer program. While we believe AIS will likely meet the requirements under the regulations you cite, common sense and pragmatism should inform how the Agency proceeds in this case. Should this application be approved before NMFS produces a long-term, sustainable fix to the LL2 situation, AIS will have been gifted contracts worth several million dollars a year. This would represent a huge hit to the other providers - who have, by the way, worked for decades to secure this work. True, AIS may fail to execute, but approving this application knowing AIS will gain such a competitive advantage and then crossing ones fingers is hardly a responsible approach to the decision at hand. Should the application be approved, clearly the most likely outcome will see the other providers weakened and the integrity of the Observer Program called into question.

As you close your letter, you say, "The Review Board will consider the concerns raised in your letter to the extent they are consistent with the application review process and evaluation criteria described in regulation." If any of the concerns raised in our letter are not consistent with the application review process, then pulling this application before the review board at this time is premature. The Agency has significant discretion as regards any provider certification application, and now is the time to use it. To repeat: this application should be put on hold until such time as a long-term, sustainable fix to the LL2 situation levels the playing field for all providers.

Sincerely,


Michael Lake
President

July 16, 2012

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

Subject: FDMS Docket Number NOAA-NMFS-2011-0278; Monitoring and Enforcement Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet

Dear Mr. Merrill

I hope that all is well at Alaska Region NMFS and your summer in Juneau is going well. Please accept on behalf of all Freezer Longline Coalition (FLC) members the following comments in response to the proposed rule request for comments as captioned above in the subject line and as published in the Federal Register Vol. 77, No. 116 on Friday, June 15, 2012. As well these comments will address the Regulatory Impact Review and Environmental Assessment (RIR/EA) prepared for this action and incorporated by reference in the proposed rule.

The FLC represents a Washington and Alaska based and owned fleet with operations in Federal waters off the coast of Alaska. The vessel Members in the FLC represent 100% of the primary parties affected by this proposed rule. This fleet is principally a Pacific cod single species directed fishery fleet, and, therefore, is nearly fully reliant on Pacific cod catch. While some FLC companies may be submitting individual comments, in the interest of timely and efficient submission please accept these comments by the FLC as a **fully unanimous position of all parties directly targeted by this proposed rule.**

The FLC is grateful to NMFS and the hard working staff who have worked on these management and enforcement changes for some time. The BSAI freezer longline fleet has, for many years, been advocating for changes in the protocol for estimating the catch of Pacific cod in this fleet. Therefore we greatly appreciate the effort of NMFS to address what has been, in our opinion, a longstanding shortcoming in the management of Pacific cod catch. Much of the proposed rule serves to address both our concerns and those of NMFS. With only a few issues to be resolved the FLC believes the proposed rule will serve as a template for a final rule and urges NMFS to make the changes as requested below and publish the final rule without delay.

While several items in the proposed rule and associated EA/RIR should be corrected or clarified our intention is to address those issues by informal communications as they are principally secretarial in nature. Therefore we will maintain the focus of these comments on the paramount concern at hand, the requirement for Non-trawl Lead Level Two (LL2) observers to serve on all vessels choosing the scales option.

We respectfully request that NMFS discard this requirement in the Final Rule for the following reasons.

- **The requirement that only the most highly trained observers can be employed to do the work on a fixed gear longliner choosing the scale option is not supported by fact. Evidence indicates these observers are not necessary on a freezer longliner.**

While we agree for the need to more precisely estimate the catch of Pacific cod, and further agree that scales as outlined in the proposed rule are an agreeable manner to accomplish this necessity, the FLC Members unanimously disagree with the need for increased observer experience as a necessary tool to accomplish this goal. Fundamentally the requirement to mandate that only federal observers with the highest level of training available can work on vessels that have arguably by far the simplest method of fishing for an observer to estimate, who take fish at a very slow pace, over a very long time, and who are primarily targeting a single species, is logically inconsistent.

The Freezer Longliners have been carrying the same level of observer coverage for many years. The proposed rule advocates the addition of a move to 100% coverage on all freezer longline vessels, the addition of scales to weigh all cod catch and camera systems to monitor the proper use of the scales. While other options exist within the rule, all FLC vessel owners have indicated they will choose the scales option. This point is recognized in the analysis that accompanies the rule.¹ With these additional requirements, maintaining the same level of experience and training for observers that we are currently carrying, and have carried for many years, will clearly accomplish the rules intent. The proposed rule identifies that its intent is in providing for the "need for enhanced catch accounting, monitoring, and enforcement" and to "improve the precision of the accounting for allocated quota species."² This can and should be accomplished without the burdensome and potentially ruinous requirement for only LL2 observers to serve aboard these vessels. The proposed rule accomplishes all that is necessary without the requirement for LL2 observers on every boat.

Longliners because of the relatively low catch overall and the one-fish-at-a-time method of fishing already allows an observer to count and weigh more individual fish than a trawler. Precise estimates of bycatch, species composition and discards can be easily accomplished and do not require only the highest experienced observers. Participating in a single fisheries cooperative these vessels have fewer requirements for estimates beyond cod catch than most other vessels fishing in a quota share fishery. Current training already provides the observer with all of the necessary skills in working with the scales and other particulars to work on board a freezer longliner and accurately provide catch and bycatch information to NMFS on a daily basis.

If left unchanged the rule would separate the freezer longline fleet as the only fixed gear fleet in existence with this requirement. In comparison to other fleets with LL2 requirements, the freezer longline fleet will harvest in 2012 a maximum of 113,000 mt of Pacific cod. Compare this fleet

¹ Regulatory Amendment to Modify Monitoring and Enforcement Requirements in the BSAI Freezer Longline Fleet Regulatory Impact Review/ Environmental Assessment, May 2012

² Rule, Federal Register /Vol. 77, No. 116 / Friday, June 15, 2012 / Proposed Rules, Summary page 35925

to other fleets that have a LL2 requirement such as the Bering Sea pollock fleet with catch more than ten times the amount of the freezer longliners in pollock alone. Another example is the complex multi-species harvesters of the BSAI H&G trawl fleet that direct fish on a dozen separate flatfish species in addition to Pacific cod, Atka mackerel and Pacific Ocean Perch. The H&G trawl fleet harvests many more times the harvest of the freezer longliners with fewer vessels of much larger processing capacity in fewer at sea days. To use the experience in these fleets as a demonstration for a need for Lead Level Two observers for smaller less productive freezer longliners, and further to use this rationale to support a NMFS belief that therefore an observer onboard a cod freezer longliner should have to meet the same requirement is not a logical conclusion and is not supported in the proposed rule or the EA/RIR. Simply stating that NMFS believes the requirement is needed is not rationale to create huge regulatory burden for industry.

In publishing the proposed rule as is NMFS has discounted the repeated calls during the development of the rule by industry leaders and the entire pool of NMFS contractors for the employment of observers. Repeatedly and consistently since the requirement was first poised by NMFS these experts have advised that the requirement for Lead-Level Two observers was not necessary for this fleet and would be a highly problematic regulation, perhaps resulting in the stranding of vessels to the dock. Rather than accept expert opinion, NMFS is choosing in lieu to push forward with the requirement for Lead-Level Two observers based on the position that this is necessary in the case of the Freezer Longliners because it was found to be necessary in previous rationalized fisheries.

As a matter of fact in the only discussion on other fixed gear fisheries operating in a quota share program the EA/RIR states *"The halibut and sablefish IFQ programs were introduced before 1999, and lead level 2 requirements have not been introduced into those fisheries. No observers have been required in the halibut fishery."* The vessels being are in many regards more comparable to the freezer longline vessels, than are the large trawl fisheries referenced by NMFS, a few are in fact freezer longliners. The other fixed gear fishery perhaps more in line with the methods of a freezer longliners than a trawler is the Bering Sea crab catcher processor fleet. This is a federal fishery, managed by deference to the state of Alaska and requires one observer aboard the catcher processor crab fleet. No Lead Level Two observer requirement exists for this similar fleet.

While the halibut and sablefish IFQ vessels will be, and we agree should be, receiving a higher level of observer coverage under the new restructured observer program starting in 2013 no requirement for LL2 observers exists for good reason, it simply is not necessary on board a longliner targeting a single species. To require these vessels to only carry LL2 would make about as much sense as it does for the freezer longline fleet.

The freezer longline fleet should have 100% observer coverage as mandated in the proposed rule, we agree with that. We also have agreed to the scale requirement as a solution for more precise estimates of the cod catch, and we agree that one observer on board at all times is the proper manning requirement. The addition of multiple-camera systems on these vessels as proposed in the rule is also an acceptable addition for the strengthening of management and enforcement.

However, the concept referenced in the EA / RIR analysis and the proposed rule that another additional layer of management and enforcement on top of the foregoing is called for, requiring that every vessel in the fleet carry a LL2 certified observer to assure that regulations are adhered to, is simply not necessary when considering the pace of the longline fishery. Observed sets can be compared to unobserved sets, a multiple camera system is recording all possible sources of bypass around the scale when the observer is not in the area of the scale. The offload can be monitored and compared to catch records if necessary. With these smaller longliners the opportunity is simply not there for widespread deceptions as in the larger trawl fisheries and there is absolutely no evidence, even antidotal, that a problem exists. This is a fishery that is well into its second year in a cooperative fishery and has been fishing for over 25 years without any history of deception on catch that would justify such a far reaching and financially damaging regulation to be mandated.

The CDQ fixed gear longline catcher processor fleet no longer has a requirement for lead level two observers. Until recently, as explained in detail in the EA/RIR, this fleet had a LL2 requirement. This former requirement was on a small number of vessels, and since the requirement for LL2 was lifted the fleet has not experienced any adverse results. This requirement was also far different than requiring this for the entire fleet as explained and expanded on in the next section. We believe that the absence of any significant issues in this fleet since the LL2 requirement was discarded is further evidence that the requirement for LL2 observers for the entire fleet is simply unnecessary. **Considering the potentially massive negative results to industry the requirement should be removed from the final rule.**

- **The requirement that only the most highly trained observers can be employed to do the work on a fixed gear longliner will be unworkable in the long-term. The pool of observers available to fill this requirement will be quickly depleted and significant, irreparable harm will be caused to this fleet.**

Letters³ signed by all of the companies in existence that currently provide federal observers to the freezer longline fleet indicate an inability for these providers to supply the anticipated number of LL2 observers going into the future if the proposed rule becomes law. There is currently no alternate source to supply observers to the fleet. **If NMFS does not reject this requirement in the Final Rule it is our conclusion that the rule will cause long-term severe and significant economic losses for our Members when these shortages occur.** If adequate observers are not available in a timely matter the vessels will have no choice but to stop fishing and wait for an observer to become available. Consequently, the loss of fishing caused by implementation of the proposed rule without granting the request to remove the LL2 requirement will cause instability in our fishery, severely limit the ability of the vessels to plan fishing operations and cause significant losses to the owners, operators and crew of these vessels that cannot be mitigated.

The Analysis for the EA / RIR delves into the issue of LL2 availability in depth and determines that these observers will be difficult to get but will be available. The analysis has several shortcomings and completely misses the mark in several areas. Using anecdotal information to make assumptions about a possible future the analysis makes no conclusion as to the factual basis for the proposed rules requirement that only LL2 observers can be used on vessels selecting

³ Letter to NPFMC October 2011, attached Letter to NMFS May 2012, attached

the scales option. The analysis is only mildly convicting that we may be able to find these observers in year one of the program but after careful review and discussions with the author of the EA / RIR analysis we are convinced the analysis itself shows it will be tight and may quickly unravel and become impossible at any price to fill the vacancies.

The analysis indicates that estimates using 2011 as a baseline the freezer longline fleet "would have required 133 individual observers"⁴ while admitting the upper bound may be as high as 150⁵. This range is possibly correct although fluctuations are driven by Total Allocated Catch (TAC), which is on the increase, which was not but should have been taken into account in the analysis.

The analysis goes on to indicate that using a snapshot of only November 2011, 208 LL2 observers were available. Had the requirement for certification to LL2 been lower as is proposed by the rule the actual number would have been 250 non-trawl LL2 observers that would have been qualified under the proposed rule.⁶ Again we accept that this is likely correct for one small period of time and the only time that was looked at. This methodology falls far short of a complete analysis. This completely misses any look at whether these observers were also trawl LL2 certified. In other words these observers were not available to the freezer longliners as they were likely deployed into the trawl fishery where they are needed and required. This is a major error in the analysis that causes all other projections on numbers of LL2 observers that will be available in the future to the freezer longliners to be questionable. The analysis indicates that out of the 208 non-trawl observers available in this time period only 39 served on board freezer longliners.⁷ The analysis questions why more were not deployed in the fleet but fails to look for an answer when an answer was available. These observers were not available quite possibly because they were deployed into other fisheries where they are required.

The analysis recognizes that the pool of available observers with non-trawl LL2 certification was created by a past requirement that all CDQ fisheries have a LL2 certified observer. This requirement was met with some difficulty, but was met, primarily by the available training platform for non-trawl observers being the entire non CDQ freezer longline fleet. This training platform is being eliminated by the proposed rule. The analysis notes, that "almost all of the catcher processors would choose the scales option"⁸. In fact 100% of the FLC members have indicated that they will eventually select the scale option. Most will do so in the first year with the remainder doing so in year two. Once this occurs the training platform that created the current pool of available non-trawl LL2 observers, whatever the actual number of available observers turns out to be, goes away.

While the analysis drifts into an odd supposition and offers a solution to the forgoing obvious problem that "It is possible, however, for the cooperative to arrange for its members to compensate some vessels to carry an observer in addition to the lead level 2, and the observer

⁴ EA / RIR pg 60

⁵ EA / RIR pg 61

⁶ EA / RIR pg 61

⁷ EA / RIR pg 61

⁸ EA / RIR pg 61

could thus obtain sampling experience needed to qualify for a lead level 2 position⁹. This theory is flawed from the get go. It is not possible that this will take place in actuality, not because the FLC would not be willing to, at huge expense to itself, take up an observer training program for NMFS that would be far out of the realm of any observer program currently in existence, but because federal law mandates that we cannot request particular individuals to work on our vessels. The analysis notes this in an earlier section *"Fishing firms cannot request specific individuals (and are prohibited from discriminating on a number of other grounds, including sex, as well)."*¹⁰

In reality if we did provide training time for the federal observers there is no mechanism available to assure these observers would ever come back or be available for our fleet. The analysis itself recognizes that *"Observer attrition is high"*¹¹ and *"few observers will be taking trips only on fixed gear vessels"*¹² and notes that the observers themselves are not prone to be fond of the work aboard a freezer longliner *"Anecdotal information from industry observers indicates that many observers find freezer longline work relatively less desirable than some other types of observer work. The vessels take relatively long trips, and a single observer must often work long shifts, with little or no sleep, often relatively exposed to the weather, to meet the requirements of random sampling schedules prepared in advance."*¹³ And another issue is noted in the analysis *"Observer companies, and fishing firms, are likely to be reluctant to compel observers to fulfill contractual commitments and serve on fishing vessels when they do not want to do so."*¹⁴

Another gross shortcoming of the analysis as to its approach on the future availability of LL2 observers to the freezer longline fleet is the concept that if there were a shortage of observers, which we contend is a certainty under the proposed rule, the freezer longliners and observer providers could simply "bid-up"¹⁵ the price offered to observers to encourage them to obtain the LL2 certification and work aboard the freezer longliners. This concept places far too much burden on the freezer longliners which currently pay roughly \$400,00 per day for each observer including room and board and airfare and transportation to and from the vessel.

There is absolutely no evidence that paying more will fix the problem of a lack of available observers, particularly to the degree that a lack of observers is projected by the observer providers. In addition this must be placed into context with the newly restructured observer program that is yet to be implemented. Because of the structure of that program, observers will be paid a higher rate than observers currently working on freezer longliners and an exodus to the higher paying positions could occur. **The freezer longliners will already likely have to pay more than the current rate to obtain any observers without adding the LL2 certified requirement to the mix.** *"Note that the observer restructuring program, by increasing wages among vessels in the less than 100 percent sector, will also put upward pressure on wages in the*

⁹ EA / RIR pg 62

¹⁰ EA / RIR pg 55

¹¹ EA / RIR pg 64

¹² EA / RIR pg 54

¹³ EA / RIR pg 55

¹⁴ EA / RIR pg 66

¹⁵ EA / RIR executive summary pg X, EA / RIR pg 67, 71

100 percent sector".¹⁶ As previously stated we do not believe LL2 certified observers are needed on a freezer longliner to accurately and competently provide the necessary catch information to NMFS, particularly with the scale option. The current pool of observers we are now using, a mix of LL2 certified and non-certified will be more than sufficient. The analysis indicates that the freezer longliners are among the simplest platforms for observers. "This fleet requires one of the most straightforward sampling strategies of all potential fixed gear deployments"¹⁷ We would strongly contend that the freezer longline fleet requires one of the most straightforward sampling strategies of all gear deployments, period!

The final shortcoming in the rule that we would like to address is the manner in which the analysis relies on assumptions of a future, yet to be implemented, restructured observer program, to become nearly the only sole training ground left for a new observer to gain the experience to become a non-trawl LL2 observer. If for no other reason the LL2 requirement in the rule should be dropped because until the new program is implemented and has fully functioned for several years, we have no idea whether the analysis is correct in its assumptions as to how many LL2 observers will be created in the future program. And certainly there is no factual evidence that the program will function as outlined in the analysis. Take for instance the following quotes from the analysis as an indication as to the difficulty of predicting the future availability of the LL2 observers for our fleet:

*"The development of a cooperative based fishery is expected to lead to changes in the duration of fishing and the number of vessels participating in the fishery. This makes accurately estimating observer demand in the future difficult"*¹⁸ This leaves out the single most important driver, that being Allowable Biological Catch and Total Allocated Catch or ABC and TAC. The analysis was based primarily on 2011 numbers for estimated needs of observers. The TAC in 2011 was 228,000 mt but in 2012 rose to 261,000.00 mt an increase of over 13%, the 2013 TAC could be as high as 319,000¹⁹ mt or a 70% rise over the lone 2011 year used in the analysis as a basis for LL2 Observer needs. This approach again falls short by failing to recognize that a freezer longline fleet can only catch fish at a certain rate and a rise in TAC equates to a similar rise in observer coverage requirement.

Even on the assumption that this future program functions as anticipated in the analysis there is absolutely no assurance that these newly created LL2 observers will want to, or will have the ability to, move to the freezer longline fleet as they will be working under a wholly separate observer program. The work these observers do is considered "contract work", observers are not always guaranteed to be available, the analysis does not account for factors such as higher education, raising a family and observers working in another job that will certainly account for observers with experience and LL2 certificates not choosing to become freezer longline observers. Right now all observers that want to work are working; other factors contribute to the turnover rate, nature of the work, personal relationships and being on land vs. water. The analysis and the rule fail to recognize the many barriers that will exist between "contract

¹⁶ EA / RIR pg 62

¹⁷ EA / RIR pg 59

¹⁸ EA / RIR pg 60

¹⁹ NMFS, TABLE 1—FINAL 2012 AND 2013 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC). (USING ABC = TAC for 2013, 2012 was TAC = ABC by industry agreement and NPFMC approval.)

observers" (in the yet to be implemented observer restructuring program) and "pay as you go observers" (observer pool currently available to the freezer longliners).

Closing:

The concept to require Non-trawl Lead Level Two (LL2) remains as our paramount concern with the rule as proposed. Of further concern is the fact that NMFS staff and the authors of the proposed rule have discounted an entire industry comprising every individual directly affected by this rule and further has ignored the advice of every single observer provider company who contracts with NMFS to provide these observers. Not only has NMFS disregarded the entire industry who first requested the changes as outlined in the proposed rule and their own expert contractors, both of who have clearly articulated major issues with the increased observer certification as proposed in the rule but further uses flawed rationale to support its position on the necessity of including the requirement for increased observer training.

We respectfully request that NMFS discard the LL2 requirement for those vessels selecting the scale option in the Final Rule for the above aforementioned good cause.

Kenny Down
Executive Director
Freezer Longline Coalition
<http://freezerlonglinecoalition.com/>



Cc:
Dr. Jim Balsiger, Regional Administrator, Alaska Region