



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

September 8, 2014

Chad See, Executive Director
Freezer Longline Coalition
2303 West Commodore Way, Suite 202
Seattle, Washington 98199

Dear Mr. See:

I am writing in response to your August 28, 2014, letter that raises a number of issues regarding the availability of lead level 2 observers that your member vessels must use when fishing for Pacific cod in the Bering Sea and Aleutian Islands management area. The lead level 2 observer requirement is one of several enhanced monitoring and catch accounting measures associated with the formation of a voluntary cooperative by the participants in the freezer longline fleet. These measures are intended to provide a consistent measured weight of Pacific cod, the primary species harvested by the freezer longline fleet. You asked NMFS to implement a non-enforcement policy for "failure to maintain coverage" violations related to a vessel's failure to use a lead level 2 observer. The requested policy would, in effect, allow your members' vessels to leave the dock when a lead level 2 observer is not available for deployment.

NOAA does not adopt non-enforcement policies. We expect industry members to take actions necessary to comply with regulations. We believe that the conditions currently exist for the freezer longline fleet to comply with the lead level 2 regulation, though it may require action on the part of your members.

The requirements placed on the freezer longline fleet in 2013 provided the fleet with two options: option 1 -- to take two observers, one of whom would meet lead level 2 experience requirements; or option 2 -- to take one lead level 2 observer in combination with a flow scale that the crew would use to weigh all Pacific cod. Lead level 2 observers are observers with specific experience and training that ensure collection of accurate and complete data on vessels that require additional expertise to monitor. The lead level 2 experience requirements are necessary for the collection of complete, accurate, and timely fisheries data in the voluntary cooperative program run by the freezer longline cooperative. The voluntary cooperative program operated by the freezer longline coalition operates as a catch share program. Catch share programs require precise estimates of catch to ensure accurate accounting so that vessels do not exceed their specific catch allocations. NMFS' experience with catch share programs has shown the need for experienced observers in these situations.

Option 2 offers vessel owners the opportunity to reduce observer costs by installing a set of scales and operating with a single observer. However, the demands on a single observer are pronounced and an experienced lead level 2 observer is required. All Alaska groundfish catch share programs adopted since 1999, such as the American Fisheries Act, the Amendment 80 Program, and the Gulf of Alaska Rockfish Program, have included similar lead



level 2 observer requirements. Participants in these programs have been able to consistently meet the lead level 2 observer requirements.

Freezer longline fleet member vessels have chosen, with one exception, Option 2 -- the flow scale option with one observer as their preferred method for monitoring catch. The near unanimous selection of Option 2 by the fleet was anticipated. NMFS has provided regulatory changes to facilitate the ability for lead level 2 observers to operate in this fishery. Furthermore, NMFS has offered several solutions to the fleet to ensure adequate numbers of lead level 2 observers are available to support fishery operations with one required observer. These solutions can be adopted by the freezer longline fleet without any change in regulations or adoption of a non-enforcement policy.

When NMFS established the monitoring regulations for the freezer longline fleet, it reduced the threshold eligibility requirements for lead level 2 observers for the fleet. NMFS reduced the experience needed to obtain lead level 2 status from 60 to 30 sets (hauls). This reduction allows an observer to achieve lead level 2 status after a relatively short period of time onboard a freezer longline vessel; potentially in as little as two to three weeks depending on the number of sets made by a vessel. The reduction allows a vessel owner to take two observers, one with lead level 2 status and one without lead level 2 status, for a period of time. After the second observer has met the requisite requirement to achieve lead level 2 status, that observer could serve as a lead level 2 observer. Consequently, two-observers would no longer be required on that vessel. Only recently has the fleet started to take second observers for these lead level 2 observer eligibility purposes.

In September, 2012, NMFS published the final rule modifying the freezer longline vessels monitoring requirements. In the rule and the supporting analysis, NMFS noted that the industry could ensure there are enough lead level 2 observers either by adequately compensating existing observers, or by facilitating how observers meet the lead level 2 eligibility requirements. In a response to a comment on the proposed rule, NMFS noted that:

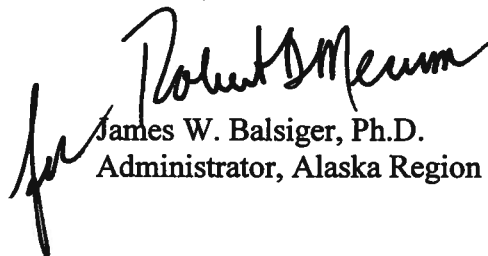
“Methods exist to obtain, train, and retain the needed lead level 2 observers.... These methods include paying observers higher wages and using the voluntary cooperative’s structure to compensate vessels that choose to carry an additional observer to gain the experience required for lead level 2 certification. The cooperative may be able to arrange for its members to compensate some vessels to carry an observer in addition to the lead level 2 observer, and that observer could obtain the sampling experience needed to qualify for a lead level 2 position. The freezer longline fleet may also use the cooperative arrangements to adjust their fishing operations to ensure that a lead level 2 observer is available to the fleet and vessels are not stranded at the dock without observer coverage. The observer employment market will play a crucial role in ensuring that enough lead level 2 observers are created and mobilized to meet the quantity demanded. Based on the analysis prepared for this action, NMFS anticipates that there will be enough lead level 2 observers to meet the requirements of this monitoring program.”

We believe that this response is still correct.

Finally, NMFS has noted that the freezer longline fleet can reduce observer attrition and ensure adequate numbers of lead level 2 observers. We reported in a June 2014 report to the Council that there were 213 active¹ observers with the requisite qualifications to serve as a lead level 2 observer for the freezer longline fleet. NMFS believes that this current pool of lead level 2 observers is sufficient to meet regulatory requirements. However, NMFS notes that observer companies do not generally pay a significant premium to observers for lead level 2 qualifications nor do they charge fishing companies more for providing them. NMFS notes that the freezer longline fleet could negotiate higher wages to help guarantee that an adequate number of lead level 2 observers is maintained. NMFS has no role in setting the compensation provided to lead level 2 observers in the freezer longline fleet. It is essential that observer provider companies and the freezer longline fleet provide compensation and working conditions that will attract and retain qualified observers, or provide a mechanism that gives newer observers lead level 2-qualifying experience.

At its June 2014 meeting, the Council requested that staff prepare a discussion paper about the lead level 2 observer availability issue. Specifically, the Council requested staff to identify regulatory and non-regulatory alternatives “to develop a sustainable, renewable and adequate pool of fixed-gear, lead level 2 observers.” This letter identifies a number of non-regulatory alternatives. NMFS will request further input from the Council at its October 2014 meeting about the priority of development of regulatory alternatives to address the lead level 2 observer availability issue relative to other Observer Program analytical projects. In the meantime, we welcome information showing steps your fleet members have taken to ensure lead level 2 observers are available when needed. The need for quality data from the lead level 2 observers serving in this fleet has increased under cooperative management, and we encourage creativity in working with the observer provider community to ensure that requirement is met. Thank you for your continued cooperation in our efforts to sustainably manage our federal fisheries.

Sincerely,



James W. Balsiger, Ph.D.
Administrator, Alaska Region

¹ Defined as having debriefed within the past 18 months.