



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

May 31, 2011

Aggie Blandford, Executive Director
Western Alaska Community Development Association
495 G Street, Suite 720
Anchorage, Alaska 99501

Dear Ms. Blandford:

Thank you for your letter of April 22, 2011, requesting a determination about whether the regulation of harvest provisions of section 305(i)(1)(B)(iv) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) apply to longline catcher/processors participating in the Western Alaska Community Development Quota (CDQ) fisheries.

The regulation of harvest provisions of the Magnuson-Stevens Act require that the "harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector." Further, section 116(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 states that for purposes of section 305(i)(1) of the Magnuson-Stevens Act the term "fishing cooperative" means ". . . a fishing cooperative whether or not authorized by a fishery management council or Federal agency, if a majority of the participants in the sector are participants in the fishing cooperative." (Public Law 109-479; 16 U.S.C. 1855 note).

In your letter, you noted that owners of the longline catcher/processors participating in the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery have formed a voluntary fishing cooperative for 2011 with 100 percent participation among the members of this fleet. You also noted that the CDQ groups provided information about the formation of this cooperative in the comments it provided to NMFS in 2010 regarding proposed revisions to CDQ fisheries management regulations (75 FR 39892; July 13, 2010).

NMFS agrees that if a voluntary fishery cooperative exists in the longline catcher/processor sector, then the CDQ Program regulations that govern this sector should be revised. In response to the CDQ groups' comment on the proposed rule, NMFS is addressing this issue in the final rule.

Since receiving your letter, we have received documentation signed by an authorized representative of the longline catcher/processor cooperative confirming that a fishing cooperative meeting the requirements of the Magnuson-Stevens Act exists. Therefore, on the basis of the circumstances set forth in that documentation, the regulation of harvest provisions in section



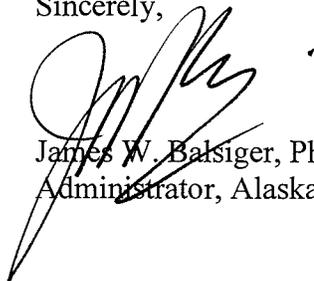
305(i)(1)(B)(iv) apply to vessels in that sector while such vessels are harvesting groundfish on behalf of a CDQ group. Should the circumstances set out in the documentation provided by the longline catcher/processor cooperative change, then our determination could also change.

NMFS defines the longline catcher/processor sector as those vessels defined in the Consolidated Appropriations Act, 2005 (P.L. 108-447; 118 Stat. 2886) as the “longline catcher processor subsector.” This sector is comprised of “holders of an LLP (License Limitation Program) license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and hook-and-line gear.” Table 1 provides a list of those vessels and associated LLP numbers.

Applying the regulation of harvest provisions of the Magnuson-Stevens Act to the longline catcher/processor sector means that the same regulations that apply to those vessels while participating in non-CDQ fisheries in the Bering Sea and Aleutian Islands management area would apply while these vessels are groundfish CDQ fishing. Table 2 shows the general categories of regulations including observer coverage requirements, observer experience levels, a requirement to provide an observer sampling station, and the basis used for catch accounting, and how those regulations differ for the longline catcher/processors between the CDQ and non-CDQ fisheries. If the regulation of harvest provisions apply, then the regulations in the last column of Table 2 would apply to any longline catcher/processor participating in the groundfish CDQ fisheries.

If you have additional questions about this determination process or the regulations that will govern longline catcher/processors fishing for groundfish CDQ while they are fishing in a voluntary cooperative, please contact Obren Davis at 907-586-7241.

Sincerely,



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

Attachments

cc:
NOAA Office for Law Enforcement, Alaska Region
NOAA AFSC, Fisheries Monitoring and Analysis Division
U.S. Coast Guard, 17th District, Enforcement Branch

Table 1. Catcher/processors and associated LLP groundfish licenses and endorsements

Vessel Name	LLP License Number
ALASKA MIST	LLG2892
ALASKAN LEADER	LLG2238
ALASKAN LEADER	LLG2112
ALEUTIAN LADY	LLG3090
BARANOF	LLG1578
BEAUTY BAY	LLG3617
BERING LEADER	LLG3609
BERING PROWLER	LLG3681
BLUE ACE	LLG4508
BLUE ACE	LLG2783
BLUE ATTU	LLG2421
BLUE BALLARD	LLG2959
BLUE GADUS	LLG3973
BLUE NORTH	LLG2081
BLUE PACIFIC	LLG3847
BRISTOL LEADER	LLG3602
CLIPPER ENDEAVOR	LLG1916
CLIPPER EPIC	LLG3616
CLIPPER EXPRESS	LLG1713
CLIPPER SURPRISE	LLG1917
COURAGEOUS	LLG1576
DEEP PACIFIC	LLG1989
FRONTIER EXPLORER	LLG1125
FRONTIER MARINER	LLG1127
FRONTIER SPIRIT	LLG1128
GLACIER BAY	LLG5222
KJEVOLJA	LLG1401
LILLI ANN	LLG1988
NORTH CAPE	LLG1785
OCEAN PROWLER	LLG2958
PATHFINDER	LLG2026
PROWLER	LLG3676
SIBERIAN SEA	LLG4008
SIBERIAN SEA	LLG4823
U.S. LIBERATOR	LLG3637
ZENITH	LLG1400
No vessel assigned	LLG2085

Source: NMFS, Restricted Access Management Program, May 16, 2011

Table 2. Comparison CDQ and non-CDQ requirements for longline catcher/processors in 50 CFR part 679

May 2011

Category of Requirement	Current Requirements for CDQ fisheries	Current Requirements for Non-CDQ fisheries
Observer coverage	679.50(c)(4)(ii). Have at least two level 2 observers, unless NMFS approves an alternative fishing plan authorizing the vessel to carry only one lead level 2 observer.	679.50(c)(1)(iv) or (v) Observer coverage requirements are based on vessel's length overall and fishery category.
Observer experience	679.50(c)(4)(ii). At least one of the level 2 observers must be certified as a lead level 2 observer.	No requirements for observer prior experience.
Observer sampling station	679.32(d)(4) (i) Prior notice to observer of CDQ catch. Notify the observer before CDQ catch is brought onboard the vessel and CDQ group number for catch, (ii) <u>Observer sampling station</u> . Provide an observer sampling station as described at § 679.28(d), (iii) Obtain the <u>ATLAS</u> data entry software and ensure that observer data can be transmitted from the vessel to NMFS at any time while the vessel is receiving, catching or processing CDQ species.	679.50(g)(1)(vi) Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified. 679.50(g)(1)(iii)(B) describes communication equipment requirements for catcher/processors that are required to carry at least one observer, including ensuring that catcher/processors have the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.
The basis of catch and bycatch estimates	679.32(e)(1)(iv). The weight of halibut PSQ and all groundfish CDQ species will be determined by applying the level 2 observer's species composition sampling data to the estimate of total catch weight, if any CDQ species are discarded at sea.	Not specified in regulation. NMFS generates the best available estimates of catch and bycatch using the NMFS catch accounting system (CAS).