



D13INST 16710.1

JUN 15 2006

THIRTEENTH DISTRICT INSTRUCTION 16710.1

Subj: ALTERNATIVE COMPLIANCE AND SAFETY AGREEMENT (ACSA)
FOR FISH PROCESSING VESSELS

Ref: (a) Alternative Compliance and Safety Agreement for the Bering Sea / Aleutian Island
and Gulf of Alaska Freezer Longliner and Freezer Trawler Fishing Fleets
(b) Title 46, United States Code, Section 2101
(c) MVI Policy Letter 14/90 dated June 20, 1990, file 16710
(d) Title 46, Code of Federal Regulations (CFR), Part 28.60

1. PURPOSE: This instruction provides background and guidance for implementing the Alternative Compliance and Safety Agreement (ACSA) as described in Reference (a) and Enclosures (1-5).
2. ACTION: The Thirteenth District prevention staff and the Officer in Charge, Marine Inspection (OCMI) Seattle shall coordinate with the Seventeenth District staff and appropriate D17 Sectors to ensure that those fish processing vessels listed in Enclosure (1) that create one or more fish products defined as "Beyond Minimal Processing" in Enclosure (2) adhere to the appropriate ACSA vessel inspection standards as provided in Enclosure (3).

Because this fleet operates in both the Thirteenth and Seventeenth District areas of operations, the ACSA program has been developed with the concurrence both District Commanders. Success of the ACSA program depends upon a high level of coordination between these Districts.

3. DIRECTIVES AFFECTED: None

4. DEFINITIONS:

- a) Fish Processing Vessel: Reference (b) defines a fish processing vessel as "a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling." Further administrative interpretation provided in reference (c) indicates that for a vessel to be a fish processing vessel, the fish processing activities shall be "extensive...to prepare either fish or fish products for marketing." Based upon this guidance, a vessel which produces fish products identified as "beyond minimal processing" or "extensive processing" in Enclosure (2) is considered to be a "fish processing vessel."

- b) Fishing Vessel: Reference (b) defines a fishing vessel as “a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.” Further administrative interpretation provided in reference (c) indicates that fishing vessels may produce fish products so long the processing is “incidental or minimal” and that the “processing takes place as *a necessary part of the fishing activity* to preserve the quality of the fish.” Based upon this guidance, a vessel which produces fish products identified as “H & G” in Enclosure (2) is considered to be a “fishing vessel.”

4. APPLICABILITY: The ACSA program shall apply to those approximately 64 fish processing vessels, historically known as the head and gut (H & G) fleet, as detailed in subparagraphs (a-d):

- a) Existing or New Fishing Vessels: Existing or new fishing vessels that only produce those fish products identified as “H & G” in Enclosure (2) **do not** need to enroll in the ACSA program.
- b) Existing Fish Processing Vessels: Existing fish processing vessels that produce one or more of the nine fish products identified as “Beyond Minimal Processing” in Enclosure (2) shall comply with the ACSA inspection standards as follows:
- Neither Loadlined nor Classed: Vessels that are not classed or loadlined must meet sections (A-L) of Enclosure (3).
 - Loadlined, but Not Classed: Vessels that are not classed, but have a current loadline, must meet sections (G-L) of Enclosure (3). These vessels must remain in compliance with loadline regulations to continue producing fish products identified in paragraph 3.b.
 - Grandfathered Fish Processing Vessels: Existing fish processing vessels that meet the grandfathering provisions for both classification or loadline as provided in reference (b) are not subject to processing limitations and **do not** need to enroll in the ACSA program. Guidance for verification of grandfathering status will be incorporated into this instruction as Enclosure (6) at a later date.
 - Loadlined and Classed: Vessels which are both classed and load lined are not subject to processing limitations and **do not** need to enroll in the ACSA program.
- c) New Fish Processing Vessels: A fish processing vessel built or converted for use as a fish processing vessel after January 1, 2006, which produces one or more of the products identified as being “Beyond Minimal Processing” or “Extensive Processing” in Enclosure (2) **cannot** enroll in the ACSA program. These vessels must be classed and loadlined as required by existing laws and regulations.

4. BACKGROUND: The Bering Sea / Aleutian Island (BSAI) and Gulf of Alaska (GOA) freezer longliner and freezer trawler fleet, referred to in this memorandum as the H & G fleet, occupy a unique niche in the North Pacific fishing industry. Unlike other catcher vessels which deliver fish in the round to shore plants, H & G vessels catch, sort, head, eviscerate, clean, and prepare fish into various fish products on board the vessel. These products are then frozen, packaged, and stored on board until offloaded. Vessels in the H & G fleet have historically been regulated as "fishing vessels" as opposed to "fish processing vessels."

- a) Formal Coast Guard investigations into the losses of the F/Vs ARCTIC ROSE and FPV GALAXY, and subsequent analysis of the H & G fishing fleet found that nearly 100% of the vessels in this fleet are not operating as "fishing vessels" but instead are operating as "fish processing vessels."
- b) In accordance with reference (c), the Coast Guard believes that a strict interpretation of the "fish processing vessel" definition serves safety and is consistent with Congressional intent. In making a final determination of what products are considered to be "fish processing," the Coast Guard has utilized the standardized descriptions from the National Marine Fishery Service Product Codes (50 CFR, Part 679, Table 1). This document is provided as Enclosure (2).
- c) In terms of vessel safety requirements, the Commercial Fishing Industry Vessel Safety Act (P.L. 100-424) and the implementing regulations found in 46 CFR Part 28 make significant distinctions between "fishing vessels" and "fish processing vessels." The requirements for fish processing vessels are much more stringent than those required for fishing vessels.
- d) Specifically, non-grandfathered fish processing vessels are required by 46 CFR 28.710 and 46 CFR 28.720 to be classed by the American Bureau of Shipping, or a similarly qualified organization, and to be examined at least once in every two years for compliance with applicable regulations. Additionally, 46 CFR Subchapter E—Load Lines applies to fish processing vessels over 79 feet in length.
- e) Due to age restrictions imposed by the American Bureau of Shipping and Det Norske Veritas classification societies, nearly 70% of the H & G fleet *cannot* meet load line or vessel classification standards and *cannot* come into compliance with the existing regulatory framework. The regulations in 46 CFR 28.720 do not provide an alternative for the owner of a vessel that cannot be classed, except as provided by an exemption under 46 CFR 28.60.
- f) Both 46 CFR 28.60 and 46 USC § 5108 (a)(2) state that exemptions may be granted by the District Commander and OCMI respectively, provided that good cause exists for the exemption and that the safety of the vessel and those on board will not be adversely affected. Reference (a) fully documents that both criteria for exemption have been met for this fleet of vessels.

- g) Consequently, the District Commander may exempt a fish processing vessel identified in Enclosure (1) from the provisions of vessel classification as described in 46 CFR 28.720. Additionally, OCMIs may grant a Load Line Exemption Certificate for up to one year intervals to coincide with the District Commanders exemption from 46 CFR 28.720.
- h) To ensure that safety of vessels and crew is not compromised, exempted vessels must be inspected to the ACSA standard as described in Enclosure (3).

5. TIME LINE FOR IMPLEMENTATION:

- a) District 13 (p) shall coordinate with District 17 (p) to send out notification letters to all potentially affected vessel owners as listed in Enclosure (1), no later than June 15, 2006.
- b) After July 15, 2006, any fish processing vessel listed in Enclosure (1) that produces one or more of the nine fish products identified as "Beyond Minimal Processing" must have an initial application requesting enrollment into the ACSA on file with Sector Anchorage or Sector Seattle.
- c) An initial application will signal an owner's intent to adopt the ACSA standards. Enclosure (4) is a checklist which details what information must be provided to the Coast Guard as part of the initial application. This information can be sent via mail, fax to the address or phone numbers provided on the form.
- d) Following July 15, 2006 owners of vessels producing fish products identified as "Beyond Minimal Processing" without an application on file as detailed in paragraph 5.b. will be subject to civil and/or criminal penalties under 46 USC § 5116 and 46 USC § 4507. The vessel will be subject to operational control by the Coast Guard. In addition, any master who is operating under the authority of their Coast Guard issued license will be subjected to suspension and revocation hearings.
- e) District 13 (p) shall coordinate with District 17 (p) to track enrollment of vessels entering into the ACSA program and provide a status of enrollment to District 13 (de) no later than July 18, 2006.
- f) Following receipt of an initial application, but no later that September 15, 2006, Sector Seattle shall coordinate with Sector Anchorage to schedule a preliminary examination of the vessel to verify the vessel's progress towards coming into compliance with the ACSA.
- g) No later than May 1, 2007 all vessels must have completed their preliminary examination by Sector Seattle or Sector Anchorage. Sector Seattle shall coordinate with Sector Anchorage to identify all deficiencies and will provide a work list to the vessel owner with specific completion dates for each deficiency.

- h) Following May 1, 2007 owners of vessels producing fish products identified as "Beyond Minimal Processing" who have not demonstrated a good faith effort coming into compliance with the ACSA program will be subject to the same civil and/or criminal penalties, operational controls, and hearings as detailed in paragraph 5 (d).
- i) If the vessel owner is making a good faith effort for correction of all deficiencies noted, Sector Seattle and District 13 (p) shall coordinate with District 17 (p) and will issue a letter authorizing interim enrollment into the ACSA no later than June 1, 2007.
- j) All items must be completed for final enrollment into the program no later than January 1, 2008. Waivers for meeting the full compliance deadline may be considered by the OCMI on a case by case basis, but in general should not exceed 180 days.
- k) Following January 1, 2008, owners of vessels producing fish products identified as "Beyond Minimal Processing" that are not in full compliance with the ACSA program, except as noted in paragraph 5.j., will be subject to the same civil and/or criminal penalties, operational controls, and hearings as detailed in paragraph 5 (d).

6. COMPLIANCE DETAILS:

- a) Coast Guard Role in ACSA Compliance: It is the Coast Guard's aim to provide a high level of supervision and oversight to the ACSA program until such time that program is fully established and is functioning at a high level. As such, the Coast Guard will assume the lead for compliance with the ACSA provisions.
- b) Role of Approved 3rd Party Organizations: To the extent deemed appropriate by the local OCMI, accepted organizations such as ABS and DNV or an accredited marine surveyor of an approved 3rd party organization, may examine or provide verification of appropriate sections of this agreement. Enclosure (5) describes who may verify compliance and inspection intervals.
 - Certificates of Compliance: For vessels enrolled in the ACSA program, a Certificate of Compliance (COC), which verifies compliance with 46 CFR Part 28 and 33 CFR Parts 151 and 155, will be completed annually by ABS, DNV or an approved 3rd Party examiner. The Coast Guard will provide oversight to COC examinations, but will not issue a COC. Emergency drills as required by 46 CFR 28, Part 270 will be a part of the COC exam and will be performed to the satisfaction of the attending marine inspector or approved 3rd Party examiner, so long as that person is a Coast Guard approved drill conductor.
- c) Full Compliance: The Thirteenth and Seventeenth District Commander shall provide oversight to ensure full compliance with Sections (A)-(L) of this agreement. Compliance will be achieved when an exemption letter is issued annually by the appropriate District Commander allowing an H & G vessel to operate as fish processing vessel.

- d) Correction of Deficiencies & Enforcement: Following entry into the ACSA program, a participating vessel found to be out of compliance with the provisions of the program will be directed to correct any deficiencies in a timely manner as determined by the Officer in Charge of Marine Inspection. Failure to correct these deficiencies may result in removal from ACSA program. The goal of the ACSA program is to provide a reasonable amount of time (January 8, 2008) for vessels to come into compliance with the ACSA standards. However, nothing in this agreement shall limit the OCMI from requiring a vessel owner to correct a deficiency immediately if, in the opinion of the Coast Guard, such a condition is determined to be especially hazardous to the crew, vessel, or environment.
- e) MISLE Entry Standards: Under development and to be included in this instruction as Enclosure (7) at a later date.

7. FUTURE ACTIVITIES IN SUPPORT OF THE ACSA

- a) Annual Meetings: On an annual basis for a 5 year period, District 13 (p) shall coordinate with District 17 (p) to meet with industry representatives, owners and operators to determine the effectiveness of the ACSA program.
- b) Modifications to the ACSA Inspection Standards: It is anticipated that the extensive examination of vessels will identify shortcomings in the ACSA program. Changes and adaptations to the ACSA standards may be made so long as the ACSA standards continue to provide an equivalent level of safety to the classification and load line requirements.
- c) Updates to Fish Product Guide, Enclosure (2): This list was developed for the Head and Gut Fleet and is not all inclusive. As industry practices change or if questions arise, the District Commander shall evaluate the operation for a determination and forward a recommendation to Commandant.



R. R. HOUCK

- Encl:
- (1) List of Affected Vessels
 - (2) Product Codes & Coast Guard Determinations
 - (3) ACSA Inspection Standards
 - (4) Requirements for Vessel Application
 - (5) Compliance Matrix
 - (6) Verification of Grandfathering Provisions (Under Development)
 - (7) Development of MISLE Data Entry Standards for ACSA (Under Development)