

**ALTERNATIVE COMPLIANCE AND SAFETY AGREEMENT (ACSA) FOR THE  
BERING SEA / ALEUTIAN ISLAND AND GULF OF ALASKA  
FREEZER LONGLINER AND FREEZER TRAWLER FISHING FLEETS**

**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 head and gut (H & G) fleet, occupy a unique niche in the North Pacific fishing industry, both with regards to vessel operations and to their regulatory status as “fishing vessels.”<sup>1</sup> 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.<sup>2</sup> These products are then frozen, packaged, and stored on board until offloaded. To create fish products on board, H & G vessels have a crew complement which range from 15 – 55 people, with an average size of 20 crew members for H & G longliners and 35 crew members for H & G trawlers. In contrast, the crew size of a fish catcher vessel in the Bering Sea is typically 5-6 crew members. H & G operations require a sizeable crew, processing and freezing machinery, hazardous gases (anhydrous ammonia or Freon), and large amounts of packaging materials on board. Additionally, because of their ability to freeze, package and store frozen catch, these vessels can operate in the most remote areas of the Bering Sea, far from search and rescue support. These factors combine to significantly increase safety and operational risks to this fleet. There are approximately 41 freezer longliners and 23 freezer trawlers which make up the H & G fleet. Enclosure (1) is a list of active H & G vessels. These vessels range in length from 90 feet to 267 feet.

The H & G fleet has suffered tremendous losses of life over the past four years. The capsizing of the F/V ARCTIC ROSE in 2001 with fifteen fatalities and the fire, explosion, and sinking of the FPV GALAXY in 2002 with three fatalities rank among the most catastrophic accidents in the history of the North Pacific groundfish fisheries. This loss of life is clearly unacceptable to the commercial fishing industry and to the Coast Guard. Formal investigations by the Coast Guard into the F/V ARCTIC ROSE and FPV GALAXY raised numerous issues.<sup>3</sup>

- These investigations brought to the forefront long-standing speculations that nine fish products historically produced by the H & G fleet are, in fact, “fish processing” as described in Title 46, United States Code (USC), Section 2101 (11c);<sup>4</sup>

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<sup>1</sup> A fishing vessel is defined in Title 46 United States Code (USC), Section 2101 (11a) as a vessel “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.”

<sup>2</sup> There are a limited number of vessels within the BSAI H & G fleet which act as motherships in certain salmon and hake fisheries of Alaska, Oregon, and Washington. These vessels take delivery of fish in the round from other fishing vessels and process the fish. The ACSA program applies to these vessels in these fisheries as well.

<sup>3</sup> The FPV GALAXY was a classed and load lined fish processing vessel. The scope of the formal investigation included a thorough review of the H & G fleet.

<sup>4</sup> A fish processing vessel is defined in 46 USC 2101 (11c) as a vessel that “commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.”

- Identified fleet-wide deficiencies in vessel stability, watertight integrity, and maintenance of other critical systems ;
- Identified fleet-wide deficiencies in emergency training, drills and crew safety competencies.

### **Problem Statement and Review of Options**

More than any other fishery in the North Pacific, the safety issues facing the H & G fleet are inseparably intertwined with the statutory definition of “fish processing,” fishery resource management issues, and an inability to come into full compliance with the existing safety regulations for fish processing vessels. Simply put, the vast majority of the H & G fleet cannot meet the current regulations for fish processing vessels as is required by existing law, yet significant safety improvement is needed in the H & G fleet to prevent further catastrophic accidents and to improve survivability following such accidents.

The Thirteenth and Seventeenth Coast Guard Districts, in extensive consultation with the North Pacific Longline Association, the Groundfish Forum, the North Pacific Fishing Vessel Owners Association, and numerous vessel owners and operators from the H & G fleet, has developed three potential options to address the problem. Essentially, the choice is between maintaining the status quo, requiring full compliance with classification and load line, or developing a compromise position which will provide a near equivalent level of safety to current fish processing vessel regulations.

*Option 1. Maintain Status Quo:* This would allow the fleet to continue its existing “fish processing” operations, without additional safety benefits, and without restrictions on certain “fish processing” activities.

#### Pros:

- Is easily implemented and maintained.
- Would allow the fleet continued flexibility for meeting future fishery management and by-catch regulations.
- Would maintain current fleet economics uninterrupted by Coast Guard influence.

#### Cons:

- Would not resolve the long-standing problems with the definition of “fish processing.”
- Would not improve safety in the fleet, allowing approximately 1600 fishermen to remain in a high risk fishery without the benefit of additional safety requirements.

- Would not be in keeping with the Coast Guard's safety responsibilities, for failing to successfully develop a binding safety program with the H & G fleet.
- Would expose the Coast Guard considerable to criticism if another H & G vessel were lost and it was determined to be a fish processing vessel in actual operations.

*Option 2. Full Compliance with Classification and Load Line Requirements:* This option would require that all vessels in the H & G fleet that are not currently classed or have a load line to either eliminate those production activities considered "fish processing", or become classed and get a load line.

Pros:

- Consistent regulatory treatment of vessels engaged in "fish processing."
- Increased levels of safety for those very few vessels (potentially one trawler and seven longliners) not subject to the vessel age restrictions imposed by ABS & DNV.

Cons:

- The vast majority of fleet (67%) **cannot meet** these classification and load line requirements. More specifically, 17 of 23 trawlers and 23 of 40 longliners exceed vessel age restrictions imposed by class and are thus ineligible for classification by any class society.
- If vessels chose to amend their practices and eliminate those production activities considered to be within the definition of "fish processing," it would allow approximately 40 vessels and 1200 fishermen to remain in a high risk fishery without the benefit of additional safety requirements.
- This option could cause a reduction of fleet size due to imposition of classification and loadline requirements, and could potentially cause a significant and politically unacceptable disruption to fleet activity.
- Would possibly conflict with existing fishery management by-catch regulations, especially for the H & G trawl fleet.

*Option 3. Implementation of the Alternate Compliance and Safety Agreement (ACSA):* The preferred option, as recommended by the Thirteenth and Seventeenth Districts, and the fishing industry is to achieve an equivalent level of safety to classification and load line requirements. The ACSA is a broad based initiative and contains within it three key steps for implementation.

- Recognize and define the previously mentioned nine fish products as "fish processing" and classify those vessels producing these products as "fish processing vessels."

- Resolve the conflict between safety statutes and fishery management statutes by allowing the fleet to produce these historically important product lines while simultaneously providing relief from the letter of the current fish processing vessel regulations (e.g. classification and load line).
- Develop a significantly enhanced, risk-based safety regime for this highly specialized fleet of vessels through the adaptation of numerous additional safety standards.

To date, each of these three steps within Option (3) has been completed at the field unit / district level. The ACSA program has been reviewed and approved by the National Fishing Vessel Safety Program manager, G-PSE, G-PCQ, and is in keeping with the national fishing vessel safety business plan. The program has been given final approval by both the Thirteenth and Seventeenth District Commanders. It is now up to individual vessels owners to decide whether or not to participate in the ACSA.

### **Resolving the H & G versus Processing Issue**

It is necessary to rectify longstanding problems in how the Coast Guard has interpreted and enforced the definition of “fish processing vessel,” as the definition relates to H & G vessels as described in 46 USC 2101 (11c).

- In 1984, Congress developed language to define “fish processing vessel” to ensure that it applied only to vessels conducting “extensive processing work...to prepare either fish or fish products for marketing.”<sup>5</sup>
- This definition was meant to exclude fishing vessels on which “incidental or minimal processing takes place as a necessary part of the fishing activity to preserve the quality of the fish.”<sup>6</sup>
- Using these descriptions, H & G vessels have historically been considered to be “fishing vessels,” not “fish processing vessels.”

Despite Congressional effort to clearly define “fish processing,” the distinction between the definitions as it relates to H & G vessels has been the source of varying and considerable interpretation between the Coast Guard and the fishing industry for 20 years. Official Coast Guard guidance to make these determinations is published as Coast Guard G-MVI Policy letter 14-90 dated June 20, 1990. Under this policy guidance, local Coast Guard Marine Safety Offices (SECTORs) are tasked with determining what products are “fish processing” and what products are not “fish processing.”

- Since 1990, numerous determinations have been made to classify various products coming from H & G vessels.

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<sup>5</sup> Congressional Record [130 Cong. Rec. H7230 (daily ed. June 27, 1984)].

<sup>6</sup> Ibid.

- These determinations were made on a case-by-case basis, often without a full understanding of vessel operations, the fisheries in which the vessel was engaged, or all other necessary and relevant information.
- Many products on which determinations were made appear to have fallen into a grey area between the Congressional distinctions of “minimal” and “extensive” processing.
- As a result, many past determinations have resulted in inconsistent application and enforcement of the “fish processing” definition.

As a follow up to the F/V ARCTIC ROSE and FPV GALAXY investigations, the Coast Guard has attempted to redress this long-standing “H & G” versus “fish processing” issue by interfacing extensively with numerous representatives of the H & G and fish processing sectors. This was accomplished through a series of meetings and individual interviews conducted from April 2004– June 2005.

- A comprehensive assessment was made of all products coming from the H & G fleet.
- A review of the statutory and regulatory definitions, the Congressional record (which provided an administrative interpretation of “fish processing”) and a comprehensive analysis of the numerous Coast Guard policy decisions was conducted to assist in the review.
- Particular emphasis was placed upon the original Coast Guard MVI policy letter guidance which stated that “strict interpretations of the definition should be applied...and that exemptions should be narrowly construed.”<sup>7</sup>

As a result of this review, the Coast Guard believes that significant number of vessels within the H & G fleet have developed nine product lines that, when viewed within the full context of present day H & G fishing operations, have far exceeded the threshold of “minimum processing.” Representatives from the fishing industry also generally agree that the nine product forms also likely exceed this standard. To standardize product forms and descriptions, these nine products are described by the National Marine Fisheries Service (NMFS) Product and Delivery Codes (50 CFR, Part 679, Table 1) as follows: headed and gutted with tail removed, kirimi, roe, pectoral girdles, heads, cheeks, chins, milt and stomachs.

Enclosure (2) lists the NMFS Product and Delivery Codes, references the historic Coast Guard determinations for each product code, and provides the revised Coast Guard determination for these products. In addition, the final two columns show the percentage of the fleet that processed these nine products in 2004. As can be seen, numerous vessels in both the longline and trawl sectors produce these nine products. The three paragraphs below explain and summarize the information contained in Enclosure (2).

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<sup>7</sup> Coast Guard G-MVI Policy letter 14-90 dated June 20, 1990

- *H & G Products*: Products which are shaded in green on page 1 of Enclosure (2) are defined by the Coast Guard to meet the standard of “minimal processing which is a necessary part of the fishing activity.” In other words, these are strictly headed, gutted, and frozen products.
  - These products may continue to be produced by all H &G vessels, regardless if the vessel participates in the ACSA.
- *Products Exceeding Minimal Processing*: Product codes which are shaded in yellow on page 2 of Enclosure (2) are defined by the Coast Guard as processing activity which *exceeds* the standard of “minimum processing,” but does not meet the standard of “extensive processing.” Most of these are considered to be “ancillary products,” many of which are likely important to the fleet to meet by-catch regulations.
  - Only those H & G vessels which meet the standards of the ACSA program would be allowed to continue to produce these fish products.<sup>8</sup>
- *Extensive Processing*: Processing codes are shaded in red on page 3 of Enclosure (2) and are defined by the Coast Guard as “extensive fish processing.”
  - Only fish processing vessels that are classed and have load lines, or those fish processing vessels which met the original grandfathering provisions found in 46 USC 4501 and 46 CFR 28.700 may produce these products.

A key feature of this new product classification system is that it allows the H & G fleet to maintain the ability to produce those fishery products historically important to the H & G fleet. However, the system strictly prohibits encroachment into those fishery products (such as fillets, surimi, and fish meal) historically produced by fish processing vessels that are classed or have load lines.

### **Resolving Conflicts between Fishery Management and Safety Statutes**

Upon discovering an H & G vessel engaged in fish processing, the Coast Guard would typically offer such a vessel two choices: (a) immediately cease production of those products considered “fish processing,” or (b) immediately bring the vessel into compliance with the existing regulations for a fish processing vessel. Due to the complexity and various limitations associated with this issue, neither of these options is realistic.

*Fishery Management Problems with Ceasing Production*: The Coast Guard is reluctant to embrace choice (a) for fishery management and safety reasons. First, ordering these vessels to discontinue these product lines could generate conflicts with the by-catch provisions of the Magnuson – Stevens Fishery Conservation Management Act (MSFMCA).

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<sup>8</sup> Classed and load lined fish processing vessels, or those fish processing vessels which met the original grandfathering provisions found in 46 USC 4501 and 46 CFR 28.700 may also produce these products.

- The reduction of by-catch has been an issue of national significance for a number of years, particularly for the H & G trawl fleet.
- The North Pacific Fishery Management Council and the NMFS have been and are actively developing amendments to fishery management plans affecting the H & G fleet to address by-catch issues.
- The Coast Guard recognizes that many of the nine product lines in question have been developed in part to accommodate by-catch regulations, and that future fishery management goals may be predicated on the continuance of these products.

*Safety Problems with Ceasing Production:* While these fishery management goals are very important, the Coast Guard's primary goal is improving safety. However, ordering these vessels to discontinue these product lines *would do nothing to improve the safety of these vessels.*

- The vessels would simply continue to operate as they had before, but producing fewer products. Because production of the nine items that are considered to be "Beyond Minimal Processing" does not require additional crew or machinery, crew sizes would not appreciably change, processing operations would not change, and distances to search and rescue assets would not change.
- By reducing the number of products on board, vessels would likely operate with less efficiency and increased discards of otherwise retainable product.

Under this option, risks to the vessel and the crew would not be reduced, and vessel owners would likely see a decline in revenue due to increased discards. This could have negative economic impacts, which could affect vessel safety and maintenance. As such, ceasing production of these products is not a viable solution because the Coast Guard is interested in improving safety for this fleet and not maintaining the status quo.

*Problems with Coming into Full Regulatory Compliance:* Both load line and vessel classification must be adhered to in order to meet the requirements of being a fish processing vessel. As such, choice (b) cannot be a partial solution (e.g. has a load line but not classed, or classed but does not have a load line) and is not in the offering. This introduces a substantial complication because few (if any) of the vessels in the H & G fleet can come into compliance with class requirements due to vessel age restrictions imposed by the classification societies.

- Both Det Norske Veritas (DNV) and American Bureau of Shipping (ABS) have policies stating that a non-classed fishing vessel greater than 20 years old *cannot be classed.*
- This policy immediately prevents 73% (17 of 23) of H & G trawlers and 62% (25 of 40) of H & G longliners from becoming classed vessels.
- Obtaining a load line is less restrictive, as there are no specific age benchmarks, however, most H & G vessels cannot meet load line regulations without significant waivers to the load line regulations and prohibitive costs to retrofit the vessels for compliance.

- The Coast Guard's own investigation into the sinking of the F/V ARCTIC ROSE specifically stated that load lines "were not designed for application to (H & G) vessels...and that a...voluntary compliance program" should be implemented instead of attempting to load line this fleet of vessels.<sup>9</sup>

Because of these restrictions listed, bringing these vessels into classification or load line is virtually impossible due to classification society limitations or prohibitively expensive for most vessel owners.

### **Alternative Compliance and Safety Agreement Specifics**

The conflict with meeting load line or classification requirements is not new. In 1996, a letter from Coast Guard headquarters to the Thirteenth Coast Guard District stated:

*"In light of the difficulties in coming into full compliance with the regulations, the only legal option is to request an exemption which may be granted under authority found in Title 46 United States Code, Part 4506. It appears that most vessel owners have avoided this avenue of relief because they feel they will not be successful. **We need to change this perception and work with the fishing community to gain the most extensive compliance we can without adversely affecting them economically.**"<sup>10</sup>*

As stated in the 1996 Coast Guard letter, an exemption from classification (46 USC 4506) and an exemption from load line (46 USC 5108(a)(2)) can be provided to these vessels.<sup>11</sup> The legislative criteria for granting such exemptions specifically states that an exemption from existing safety standards may be provided if:

- "good cause exists from granting an exemption;"
- "and the safety of the vessel and those on board would not be adversely affected."

As has been previously explained, there are certainly numerous good causes for granting an exemption: ability to come into compliance, fishery management issues, and the Coast Guard's goal to improve safety within this fleet all meet the "good cause" criterion. The second criterion, "the safety of the vessel and those on board would not be adversely affected" is also easily met, as the ACSA would significantly improve the safety regime for this fleet. A key component of the ACSA initiative has been the development of stringent safety standards that would greatly improve watertight integrity, vessel stability, fire prevention, machinery maintenance, lifesaving equipment usage, and crew member training in the H & G fleet. These standards have been extensively reviewed and discussed by gear association leaders, safety experts, naval architects, and individual owners and operators in the H & G fleet.

<sup>9</sup> Coast Guard Formal Investigation into the Sinking of the Arctic Rose, dated December 2003, pp 4.

<sup>10</sup> Coast Guard Commandant Special Case Fish Processors Letter 16711, dated October 25, 1996.

<sup>11</sup> Coast Guard District commanders have the authority to issue exemptions under 46 USC 4506 from CFIVSA regulations and 46 USC 5108(a)(2) for load line exemptions.

There is substantial support for the ACSA throughout both gear components of these fleets. The feedback provided from the fishing industry is that these standards are reasonable, achievable, and would immediately improve safety. A full listing of these safety enhancements and an analysis of these enhancements is provided in Enclosure (3).

### **Participation in and Timelines for Implementation of the ACSA**

Participation in the ACSA program is voluntary. After July 15, 2006, however, any H & G vessels producing one or more of the nine products (headed and gutted with tail removed, kirimi, roe, pectoral girdles, heads, cheeks, chins, milt, or stomachs) must have an initial application requesting enrollment into the ACSA on file with Sector Anchorage or Sector Seattle. 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, e-mail or fax to the address or phone numbers provided on the form. The following information describes the application, review, and approval process.

1. Vessels wishing to participate must submit an enrollment application no later than July 15, 2006.
2. Following July 15, 2006 owners of vessels producing these products without an application on file will be subject to civil and/or criminal penalties under 46 USC 5116 and 46 USC 4507 and 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.<sup>12</sup>
3. Following receipt of an initial application, but no later than September 15, 2006, Sector Anchorage or Sector Seattle will schedule a preliminary examination of the vessel to verify the vessel's progress towards coming into compliance with the ACSA.<sup>13</sup>
4. No later than May 1, 2007 all vessels must have completed their preliminary examination by Sector Anchorage or Sector Seattle.
5. Sector Anchorage or Sector Seattle will identify all deficiencies and will provide a work list to the vessel owner with specific completion dates for each deficiency.
6. If the vessel owner is making a good faith effort for correction of all deficiencies noted, Sector Anchorage or Sector Seattle will issue a letter authorizing interim enrollment into the ACSA no later than June 1, 2007.
7. Sector Anchorage or Sector Seattle will coordinate with the vessel owner to verify when all work list items are completed. **All items must be completed for final enrollment**

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<sup>12</sup> Classed and load lined fish processing vessels, or those fish processing vessels which met the original grandfathering provisions found in 46 USC 4501 and 46 CFR 28.700 may also produce these products.

<sup>13</sup> Sector Anchorage includes Marine Safety Detachment Unalaska or Marine Safety Detachment Kodiak)

**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.**

8. Once all work list items are completed and verified as completed by these units, they will request the appropriate District office for the vessel's full enrollment into the ACSA.
9. Upon final review and approval by the Seventeenth or Thirteenth Coast Guard District, a letter authorizing full entry into the ACSA detailing the conditions of the renewable exemptions from classification and load line will be sent to the vessel owner.
10. On an annual basis for a 5 year period, the Coast Guard will meet with industry representatives, owners and operators to determine the effectiveness of the ACSA program. 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.

## Summary

The ACSA will largely resolve current shortcomings in the safety regime of the H & G fleet, by implementing the recommendations from the F/V ARCTIC ROSE and FPV GALAXY investigations. It will also resolve the long-standing issue over the distinction between "H & G" and "fish processing." There is strong consensus from the Coast Guard and the fishing industry that through the voluntary participation in the ACSA, vessel safety standards will be greatly increased, and will provide additional levels of protection for approximately 1600 crew members who work aboard the fishing vessels in the H & G fleet. Additionally, participation in the ACSA will allow the H & G fleet to continue production of its historically important fish product lines, allowing for maximum flexibility in meeting future fishery management by-catch reduction goals. Finally, it will provide protections against encroachment into fishery products traditionally produced by fish processing vessels that are classed and have load lines.

## Statement of Mutual Support and Cooperation

The ACSA program promises to be one of the most significant safety improvements to the North Pacific fisheries since the passage of the Commercial Fishing Industry Vessel Safety Act. Because this fleet of fish processing vessels operates in both the Thirteenth and Seventeenth District areas of operations, and has extensive connections with the communities of both Alaska and Washington, the ACSA program has been developed with the concurrence of both District Commanders. Furthermore, the future success of the ACSA program substantially depends upon a high level of coordination and interfacing between these Districts and the affected fishing industry. To ensure the promise of the ACSA program is fully realized, the Thirteenth and Seventeenth Districts will jointly develop policies and procedures, share information, and provide expertise and personnel resources as necessary to cooperatively support the implementation of ACSA program.



R. R. HOUCK, Commander, Thirteenth Coast Guard District



A. E. BROOKS, Commander, Seventeenth Coast Guard District