



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic Atmospheric Administration
National Marine Fisheries Service
 P.O. Box 21668
 Juneau Alaska 99802-1668

March 29, 2017

Mr. Philip Powell
 In-house Counsel
 Global Seas, LLC
 2500 West Marina Place
 Seattle, Washington 98199

Dear Mr. Powell:

Thank you for your letter of November 11, 2016, in which you ask about the manner in which a vessel assigned to two License Limitation Program (LLP) groundfish licenses with different endorsements may operate under the authority of those licenses. Specifically, you ask:

“ . . . may the F/V Bering Defender (USCG O.N. 651751) with LLPs stacked in this way operate such that the vessel is able to harvest Pacific cod to its catcher-vessel/trawl gear LLP (LLG2787), and then process that same Pacific cod pursuant to its catcher-processor/non-trawl LLP (LLG3569)? Would the same be true for a different vessel situated in a similar way? . . . ”

NMFS has determined that allowing the F/V *Bering Defender* to stack (i.e., be assigned both) LLG2787 and LLG3569, harvest Pacific cod using trawl gear, and then process that same Pacific cod harvested using trawl gear on board the F/V *Bering Defender* while not strictly prohibited, would be contrary to the policy objectives of the LLP program included under the Fishery Management Plans (FMP) for the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea Aleutian Islands (BSAI) and regulations at 50 CFR Part 679. We describe the rationale for the specific determination for the fact pattern you have presented as it relates the F/V *Bering Defender* and LLG2787 and LLG3569 below. We note that NMFS would evaluate other situations for other vessels and LLP licenses based on the specific circumstances for those vessels and LLP licenses.

Sections 3.3.1.1 of the FMPs for the GOA and the BSAI specify that an LLP license and its associated endorsements are not severable and shall remain as a single “package” in the form they were initially issued and will not be combined with other general groundfish or crab LLP licenses. This provision of the FMPs is established in regulations at 50 CFR Part 679.4(k)(1)(i), which provides that a groundfish LLP license authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish **only in accordance with the specific area and species endorsements, the vessel and gear designations, the MLOA specified on the license**, and any exemption from the MLOA specified on the license. Under 50 CFR 679.2, a catcher vessel designation for the purposes of the LLP is defined as a license designation that authorizes a license holder designated on a groundfish license to deploy a vessel to conduct direct fishing for, but not process, license limitation groundfish on that vessel. A catcher/processor vessel designation for the



purposes of the LLP is also defined under 50 CFR 679.2; this designation authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish and process license limitation groundfish on **that** vessel.

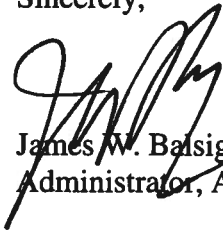
The LLP regulations at 50 CFR Part 679.4(k)(3) also state that an LLP license may be used only on a vessel designated on the license, **a vessel that complies with the vessel designation and gear designation on the license**, and a vessel that has a length overall (LOA) less than or equal to the maximum length overall (MLOA) specified on the license, unless the license specifies that the vessel is exempt from the MLOA on the license. Finally, the regulations at 50 CFR 679.4(k)(3)(iv) state that a vessel may only use a gear type consistent with the gear endorsement on the LLP license authorizing the use of that vessel to fish for license limitation groundfish or crab species. The intent of this regulation is clarified in the preamble to the proposed rule to implement Amendment 60 to the BSAI FMP, which specifically states that the LLP license gear endorsement was designed to “prevent movement between the trawl sector and the non-trawl sector” (66 FR 3977; January 17, 2001).

As you state in your letter, NMFS may assign one or more groundfish LLP licenses to one vessel. That is, LLP licenses may be “stacked” on a single vessel. However, the intent of the LLP license endorsements specified on each license, which include operation type (catcher vessel, catcher/processor), gear (trawl/non-trawl), area, and MLOA, were to be non-severable so that each license provides a single set of authorizations under which a vessel may operate. A vessel on which LLP groundfish licenses are stacked may operate as authorized by the operation type, gear, area, and species endorsements on one license or another on which it is named. However, as evidenced by the language in the FMPs and the preamble to the proposed rule (see above), it is not the intent of the LLP to allow mixing of the various operation type, gear, and area endorsements from one license with the other license. To use your example, the objective of the LLP was such that a vessel could not operate as a catcher/processor using trawl gear unless that vessel is named on an LLP license that has a catcher/processor operation type and trawl gear endorsement. A groundfish LLP license with a catcher/processor operation type and a non-trawl gear endorsement authorizes the vessel named to operate as a catcher/processor only when using non-trawl gear.

For the reasons described above, the scenario you described in your letter would be contrary to the policy objectives of the FMPs and LLP regulations at 50 CFR Part 679 because the F/V *Bering Defender* would be operating as a catcher/processor under the auspice of one LLP license using the gear type authorized by another LLP license. Due to the limitations in the regulations to directly prohibit this activity, NMFS will be notifying the Council of this issue at the April meeting of the North Pacific Fishery Management Council.

If you have any further questions in regards to this matter, please contact NOAA Fisheries, Alaska Region, Sustainable Fisheries Division at (907) 586-7228.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Balsiger', written over the printed name.

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

cc: NPFMC