

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 00-0008
)	
RODNEY P. WHITEHEAD)	DECISION
F/V LARISA M)	
ADF&G # 28268,)	February 8, 2001
Appellant)	
_____)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) that denied Mr. Whitehead's application for a groundfish license under the North Pacific Groundfish and Crab License Limitation Program (LLP), based on the qualifying fishing history of the F/V F/V LARISA M. RAM denied the application because it was filed after the December 17, 1999, LLP application deadline.

Mr. Whitehead filed a timely appeal of the IAD. Mr. Whitehead's interests are directly and adversely affected by the IAD. RAM issued a non-transferable interim LLP license to Mr. Whitehead, pending the resolution of the appeal. An oral hearing in this case is unnecessary because the record contains sufficient information on which to reach a final decision.

ISSUE

Is Mr. Whitehead entitled to have his LLP application treated as timely filed?

BACKGROUND

The following facts are uncontested.

1. RAM identified Mr. Whitehead as an eligible applicant¹ for an LLP license, as the owner of an LLP

¹50 C.F.R. § 679.4(k)(6)(I) provides that "An application form will be sent to the last known address of a person identified as an *eligible applicant* by the official LLP record." [Emphasis supplied.] Mr. Whitehead was so identified. [See the LLP Qualifications Summary for Mr. Whitehead.] Under 50 C.F.R. §679.2, however, *eligible applicant* is defined as "a qualified person who submitted an application during the application period announced by NMFS" and who meets certain other substantive requirements for eligibility. Obviously, under this definition, a person cannot be an eligible applicant until he or she has submitted a timely application. The ultimate issue in this appeal is whether, as a matter of law, Mr. Whitehead's application should be treated as having been timely submitted and, thus, whether he should be

qualifying vessel, the F/V LARISA M.

2. NMFS published the LLP final rule and the LLP application period in the Federal Register, and publicly advertised the LLP throughout Alaska during the LLP application period (September 13, 1999, through December 17, 1999). Mr. Whitehead did not read or hear about the LLP because he was not engaged in commercial fishing during this time.²

3. In mid-September 1999, NMFS mailed an LLP application form and an LLP Qualifications Summary to Mr. Whitehead's Douglas, Alaska post office address. Mr. Whitehead did not receive the documents because he had not used the Douglas post office mailing address since May 1993.³ RAM obtained the Douglas mailing address from Vessel Moratorium Program (VMP) data.⁴ RAM did not obtain the mailing address directly from Mr. Whitehead because he had never communicated with RAM or ever applied for a federal fishing permit issued by RAM.⁵

4. The LLP Qualification Summary listed Mr. Whitehead's State of Alaska "ADFG" vessel registration number as 28268.⁶ A person's ADFG vessel registration number is issued by the State of Alaska Commercial Fisheries Entry Commission (CFEC).

5. RAM uses the "first address available" from Federal Fisheries Permit (FFP) data, VMP data, or State of Alaska CFEC data to determine the last known mailing address of an eligible applicant for an LLP license.⁷ If RAM cannot obtain a mailing address from FFP data or VMP data, it uses CFEC vessel registration data.⁸ If RAM cannot obtain a mailing address from any of the three sources of information, it does its own "original research" to determine an eligible applicant's last known address.⁹

considered an eligible applicant.

²See Mr. Whitehead's letter of appeal.

³Because the Douglas post office address was at least 6 years old, it is reasonable that the post office did not forward the mail to Mr. Whitehead. See, e.g., John T. Coyne, Appeal No. 94-0012, Decision on Reconsideration, May 24, 1996, at 4-5.

⁴See the IAD and Exhibit C.

⁵See Exhibit D.

⁶Id.

⁷See Exhibit C.

⁸See Exhibit B and Exhibit C.

⁹See Exhibit B.

6. Mr. Whitehead's correct mailing address at the time of mailing of the LLP application form and the LLP Qualification Summary was his Juneau home address: 4311 Riverside Drive, Juneau, Ak 99801.¹⁰ He had that mailing address since April 1996.¹¹ CFEC had that same mailing address for Mr. Whitehead at least as early as 1997, based on the same ADFG vessel registration listed for Mr. Whitehead in the LLP Qualification Summary.¹²

7. In January 1999, Mr. Whitehead sold his home, moved into a rental unit, and had his mail forwarded to PO Box 34154, Juneau, Ak 99803.¹³ The address is Mr. Whitehead's current mailing address. CFEC has had this mailing address for Mr. Whitehead since November 1, 1999, based on ADFG vessel registration number 28268.¹⁴

8. In mid-November 1999, NMFS sent a post card to Mr. Whitehead to remind him of the LLP application deadline. Mr. Whitehead did not receive the post card because RAM sent it to the Douglas post office address.

9. On March 21, 1999,¹⁵ a former crewman told Mr. Whitehead about the LLP. The next day, March 22, 2000, Mr. Whitehead filed an application for an LLP license.¹⁶ NMFS denied the application because it was filed after the LLP application deadline.¹⁷

On appeal, Mr. Whitehead claims that he would have filed a timely LLP application if RAM had mailed an LLP application form to his current mailing address. Mr. Whitehead states that NMFS could have obtained his current address from the CFEC, the U.S. Coast Guard (USCG), or the Juneau telephone directory.

PRINCIPLES OF LAW

1. An LLP application that is postmarked or delivered to NMFS after December 17, 1999, will be

¹⁰See Mr. Whitehead's letter of appeal.

¹¹Id.

¹²See Exhibit A.

¹³See Mr. Whitehead's letter of appeal.

¹⁴See Exhibit A.

¹⁵See Mr. Whitehead's letter to RAM, dated March 22, 2000.

¹⁶See Mr. Whitehead's LLP application.

¹⁷See the IAD.

denied. 50 C.F.R § 679.4(k)(6)(I).

2. NMFS is required to send an LLP application form to the last known address of a person identified as an eligible applicant by the official LLP record. 50 C.F.R § 679.4(k)(6)(I).

3. The LLP regulations do not define the sources of information to be used to determine the “last known address” of an eligible applicant for an LLP license.¹⁸

DISCUSSION

NMFS published the LLP proposed and final rule in the Federal Register, and it publicly advertised the LLP, but those activities do not relieve NMFS from its obligation to send a timely LLP application form to the last known address of an eligible applicant for an LLP license.

RAM recognizes that the “last known address” of an eligible LLP applicant means the “best available, most current address” for each person.¹⁹ RAM’s practice is to use the “first address available” to it from FFP data, VMP data, and CFEC data to determine the “best available, most current address” of each eligible LLP applicant. In most instances, it appears that this practice worked. But the “first address available” to RAM, may not necessarily be the last known address, when two different mailing addresses are available to it for the same person. In such cases, I conclude that RAM has a duty to ascertain which of the two mailing addresses is the “best available, most current address” of an eligible applicant.²⁰

In the instant case, RAM had two different mailing addresses available to it for Mr. Whitehead at the time that it mailed an LLP application form and an LLP Qualification Summary to him. It had available to it a Douglas, Alaska post office address from VMP data, and a Juneau home address from CFEC data.

RAM did not inquire into and use the mailing address it had available to it for Mr. Whitehead from the CFEC data, even though it was the “most recent” mailing address available for him. Because RAM did not do this, I conclude it did not mail an LLP Qualification Summary and an LLP application to his last known address.

¹⁸The definition of “official LLP record” provides only that the information in the record “includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. ...” *See* 50 C.F.R. § 679.2.

¹⁹*See* Exhibit B.

²⁰*See, e.g.,* 5 Am. Jur., 831, § 591.

If RAM had mailed the LLP application form to the mailing address available to it for Mr. Whitehead from the CFEC data, it is likely that Mr. Whitehead would have received an LLP application form in the mail and mailed it back to RAM before the LLP application deadline. In light of all of the above evidence, I conclude that Mr. Whitehead's LLP application is timely filed as a matter of law.

FINDINGS OF FACT

1. RAM's practice was to use the "first address available" to it from FFP data, VMP, and CFEC data to determine the "best available, most current address" of each eligible applicant.
2. RAM had two different mailing addresses available to it for Mr. Whitehead (from those sources of information) at the time that it mailed an LLP application form and an LLP Qualification Summary to him.
3. RAM did not inquire into and use the mailing address that it had available to it for Whitehead from CFEC data.
4. The mailing address from the CFEC data was the "most recent" mailing address available to RAM for Mr. Whitehead.
5. Mr. Whitehead would have received an LLP application form in the mail and mailed it back to RAM before the LLP application deadline, if RAM had mailed the LLP application form to the mailing address available to it from the CFEC data.

CONCLUSIONS OF LAW

1. Publishing the LLP in the Federal Register, and publicly advertising the LLP, before the LLP application deadline, do not relieve NMFS from its obligation to send an LLP application form to the last known address of an eligible applicant for an LLP license.
2. When two or more mailing addresses are available to RAM, RAM has a duty to ascertain which of the two mailing addresses is the "best available, most current address" of an eligible applicant for an LLP license.
3. RAM did not mail an LLP Qualification Summary and an LLP application to Mr. Whitehead's last known address.
4. Mr. Whitehead filed a timely LLP application as a matter of law..

DISPOSITION AND ORDER

The IAD that is the subject of this appeal is VACATED. RAM is directed to process Mr. Whitehead's LLP application, and if he is qualified, to issue him an LLP license. This Decision takes effect March 12, 2001, unless by that date the Regional Administrator orders review of the Decision.

The Appellant or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska time, on the tenth day after this Decision, February 20, 2001. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement or a memorandum of points and authorities in support of the motion.

Randall J. Moen
Appeals Officer