

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 01-0015
	)	
SCOTT NEWLUN,	)	DECISION
Appellant	)	
_____	)	February 14, 2003

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) that approved Scott Newlun's application for a groundfish license, with a Southeast Outside area endorsement, under the North Pacific Groundfish and Crab License Limitation Program (LLP). The license and endorsement derives from the fishing history of Mr. Newlun's 33-foot catcher vessel, the F/V DART. The IAD denied Mr. Newlun's claim for a Central Gulf of Alaska area endorsement.

Mr. Newlun filed a timely appeal of the IAD. He can appeal the IAD because the IAD directly and adversely affects his interests. [50 C.F.R. § 679.43(b)] RAM issued a non-transferable interim LLP license to Mr. Newlun, pending final agency action of his application. An oral hearing was not held in this case because the record contains sufficient information on which to reach a final decision.<sup>1</sup> The record is now closed.

ISSUE

Does Mr. Newlun qualify for a Central Gulf area endorsement to his LLP groundfish license?

ANALYSIS

To qualify for a Central Gulf area groundfish endorsement, Mr. Newlun must establish that the F/V DART made (1) at least one documented harvest of LLP groundfish in the Central Gulf of Alaska regulatory area, or in the West Yakutat District, in each of any two years from January 1, 1992 through June 17, 1995; or (2) at least four documented harvests of LLP groundfish in the Central Gulf of Alaska regulatory area, or in the West Yakutat District, during the period January 1, 1995 through June 17, 1995.<sup>2</sup>

To be considered a "documented harvest" of LLP crab or groundfish, the harvest of the fish must

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<sup>1</sup>50 C.F.R. § 679.43(k) provides, in part: "The appellate officer will close the record and issue a decision after determining there is sufficient information to render a decision on the record of the proceedings and that all procedural requirements have been met."

<sup>2</sup>50 C.F.R. § 679.4(k)(4)(ii)(I) and (J). The documented harvests could also have been made in waters shoreward of the Central GOA regulatory area or shoreward of the West Yakutat District.

have been lawfully made, and recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvest.<sup>3</sup>

Evidence of a “documented harvest” of LLP groundfish must be demonstrated by a state catch report, Federal catch report, or other valid documentation that indicates the amount of LLP groundfish harvested, the groundfish reporting area, in which the LLP groundfish was harvested, the vessel and gear type used to harvest the LLP groundfish, and the date of harvesting, landing, or reporting.<sup>4</sup>

The official LLP record does not show that the F/V DART harvested any LLP groundfish in the Central Gulf of Alaska regulatory area, or in the West Yakutat District, during the Central Gulf endorsement qualifying period.

On appeal, Mr. Newlun claims that he has been a “Halibut fisherman and a Salmon Troller since 1988” and that he has “caught and delivered groundfish from all immediate areas around Yakutat Bay including both sides of the Bay outside waters.” Mr. Newlun stated that he “cannot locate any fish tickets with groundfish landings from the West Yakutat area. Therefore, I would say that the tickets were miss coded [sic].” [Appeal pleading]

With his appeal, Mr. Newlun submitted three Alaska fish tickets showing harvests of salmon from the F/V DART in Yakutat Bay in 1997. These harvests are not of LLP groundfish and do not fall within the Central Gulf EQP. The record on appeal does not contain any state fish tickets, federal catch reports, or other records, receipts, reports, or documents, to substantiate Mr. Newlun’s claim that the F/V DART harvested LLP groundfish in the West Yakutat District or Central Gulf of Alaska regulatory area. Therefore, based on a preponderance of the evidence in the record, I find that the F/V DART did not make the requisite documented harvests of LLP groundfish to qualify for a Central Gulf area endorsement. Unfortunately for Mr. Newlun, under the facts of this case, the LLP regulations do not provide any exceptions to the requirement that he prove the specified “documented harvests” in order to qualify for a Central Gulf endorsement to his LLP groundfish license. Therefore, I conclude that Mr. Newlun does not qualify for a Central Gulf area endorsement to his LLP groundfish license.

#### FINDINGS OF FACT

1. The F/V DART did not make a “documented harvest” of groundfish in the Central Gulf area between January 1, 1992, and June 17, 1995.
2. The F/V DART did not make the requisite documented harvests of LLP groundfish to qualify for a Central Gulf area endorsement to his LLP groundfish license.

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<sup>3</sup>50 C.F.R. § 679.2.

<sup>4</sup>50 C.F.R. § 679.4(k)(4).

## CONCLUSION OF LAW

Mr. Newlun does not qualify for a Central Gulf area endorsement to his LLP groundfish license.

## DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect March 17, 2003, 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 24, 2003. 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 in support of the motion.

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Randall J. Moen  
Appeals Officer