

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	
)	Appeal No. 01-0018
STEPHEN F. SNAPP,)	
F/V ARDIE,)	DECISION
ADF&G # 43550)	
Appellant.)	August 2, 2002
_____)	

STATEMENT OF THE CASE

Stephen F. Snapp appeals an an Initial Administrative Determination [IAD] by the Restricted Access Management Program [RAM], which denied his application for a groundfish license under the North Pacific Groundfish and Crab License Limitation Program [LLP].¹ Mr. Snapp can appeal the IAD because it directly and adversely affects his interests.²

Mr. Snapp applied for a groundfish license with a Central Gulf and Southeast Outside endorsements, based on the fishing history of the F/V ARDIE, ADFG # 43550. Mr. Snapp also indicated that he might be claiming eligibility for an LLP license pursuant to the Rehabilitation Act of 1973.³

In reviewing Mr. Snapp's application, RAM compared Mr. Snapp's claims with the official LLP record, as required by 50 C.F.R. § 679.4(k)(6)(v). The official LLP record did not show that the F/V ARDIE made the documented harvests needed for a groundfish license. RAM sent Mr. Snapp a Notice of Opportunity to Submit Evidence, which gave him 60 days to submit evidence that the official LLP record was wrong, as required by 50 C.F.R. § 679.4(k)(6)(vii). Mr. Snapp did not submit further evidence or documentation.

Mr. Snapp appealed the IAD, stating that he had been engaged in salmon fishing and did not have access to many of his records, which were in storage in Port Townsend, Washington. I issued an Order to Produce Evidence, which permitted Mr. Snapp to submit further evidence and

¹ The LLP is located in 50 C.F.R. § 679. Specifically: 50 C.F.R. § 679.1(j) (purpose and scope); 50 C.F.R. § 679.2 (definitions); 50 C.F.R. § 679.4(a)(6) (definition of harvesting privilege); 50 C.F.R. § 679.4(k)(requirements for licenses); 50 C.F.R. § 679.7 (prohibitions); 50 C.F.R. § 679.43 (appeals). The LLP regulations are on the NMFS website: <http://www.fakr.noaa.gov/regs/summary.htm>.

² 50 C.F.R. § 679.43(b).

³ Federal regulation 50 C.F.R. § 679.2 provides five methods that an applicant can prove he or she is an "eligible applicant" for purposes of the LLP program. The fifth avenue is that the applicant "is an individual who can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973, at 29 U.S.C. 794(a)." 50 C.F.R. § 679.4 (definition of eligible applicant).

further argument to support his application.⁴ Mr. Snapp responded that he did not meet the requirements for a groundfish license with a Central Gulf endorsement and that he was not eligible for consideration under the Rehabilitation Act of 1973.⁵ I have therefore withdrawn those claims from this appeal. Mr. Snapp did maintain his potential claim to an LLP license with a Southeast Outside endorsement.

ISSUE

1. Does Mr. Snapp qualify for an LLP groundfish license with a Southeast Outside endorsement, based on the fishing history of the F/V ARDIE?

SUMMARY

The IAD is affirmed. Mr. Snapp does not qualify for an LLP groundfish license, based on the fishing history of the F/V ARDIE. According to the official LLP record, the F/V ARDIE did not make a documented harvest in the general qualification period that is required for a groundfish license with a Southeast Outside endorsement. [50 C.F.R. § 679.4(k)(4)(i)(B)] The basic general qualification period is January 1, 1988 to June 27, 1992. According to the official LLP record, the F/V ARDIE harvested three pounds of rockfish in the Southeast Outside area on July 5, 1992. While the actual fish ticket suggests that the harvest occurred on July 1, 1992, that date is still after June 27, 1992, and therefore not within the general qualification period. Mr. Snapp did not prove that he harvested this rockfish on or before June 27, 1992.

ANALYSIS

To qualify for an LLP groundfish with a Southeast Outside endorsement based on the fishing history of the F/V ARDIE, Mr. Snapp must show that the F/V ARDIE made documented harvests during a general qualification period [GQP] and an endorsement qualification period [EQP].⁶ To count toward an LLP license, a harvest must be a documented harvest.⁷ When I refer to a harvest in this Decision, I mean a documented harvest.

To count towards an LLP license, a harvest must generally be of “license limitation groundfish,” which are

⁴ Order to Produce Evidence, May 2, 2002.

⁵ Letter from Stephen F. Snapp, June 3, 2002.

⁶ 50 C.F.R. §679.4(k)(4).

⁷ A documented harvest means “a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting.” 50 C.F.R. § 679.2.

target species and the “other species” category, specified annually pursuant to [50 C.F.R.] § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program are not considered license limitation groundfish. [50 C.F.R. § 679.2]

The annual specification in 50 C.F.R. § 679.20(a)(2) is the process whereby NMFS sets the Total Allowable Catch [TAC] for groundfish harvested in the Gulf of Alaska and the Bering Sea and Aleutian Islands [BSAI].⁸

To implement the LLP, NMFS was charged with constructing an official LLP record, which is a database containing information on vessel ownership, vessel characteristics and harvests by vessels during the qualification periods for licenses. [50 C.F.R. § 679.2] The applicant who claims the official LLP record is incorrect has the burden of proving that the applicant’s claims, rather than the official LLP record, are correct. [50 C.F.R. § 679.2, 50 C.F.R. § 679.4(k)(6)(v)]

1. Does Mr. Snapp qualify for an LLP groundfish license with a Southeast Outside endorsement, based on the fishing history of the F/V ARDIE?

To receive an LLP groundfish license with a Southeast Outside endorsement, Mr. Snapp must show that the F/V ARDIE meets the general qualification period requirement in one of three ways. 50 C.F.R. § 679.4(k)(4)(i)(B).⁹ The regulatory requirement is in bold, followed by an analysis of whether the F/V ARDIE meets the requirement.

[1] The vessel made one harvest of license limitation groundfish in the Gulf of Alaska between January 1, 1988 and June 27, 1992. [50 C.F.R. § 679.4(k)(4)(i)(B)(1)].

According to the official LLP record, the F/V ARDIE made no harvests of LLP groundfish within the general qualification period of January 1, 1988 to June 27, 1992. The earliest LLP groundfish harvest was three pounds of rockfish that, according to the official LLP record, occurred on July 5, 1992 in the Southeast Outside LLP area. Mr. Snapp raised the question of whether this groundfish was delivered on July 5, 1992 but harvested on or before June 27, 1992:

The Ardie had a freezer system and icing capabilities on June 27, 1992. It is extremely possible that rockfish were harvested and aboard the vessel on June 27, 1992 and delivered on July 5, 1992, within the quality handling guidelines for iced fish at that

⁸ The TAC for groundfish in the Gulf of Alaska for 2002 is on the NMFS website at <http://www.fakr.noaa.gov/sustainablefisheries/specs02/goatable19.pdf>.

⁹ The regulation has requirements for general qualification period harvests for licenses that will authorize harvesting in the Bering Sea/Aleutian Islands [BSAI] and the Gulf of Alaska [GOA]. 50 C.F.R. § 679.4(k)(4)(i)(A) & (B). The applicant for a groundfish license with a Southeast Outside endorsement must meet the GOA requirement. 50 C.F.R. § 679.4(k)(4)(i)(B).

date.¹⁰

Mr. Snapp is correct that the date and place of harvesting, rather than delivery or landing, is the basis for eligibility under the LLP. The commentary to the final LLP regulations notes: “[T]he area endorsement(s) a person is issued should reflect the area in which fishing occurred, not the area in which the fish was delivered.”¹¹

I obtained from the Alaska Department of Fish and Game a copy of the fish ticket showing the rockfish harvest, and I provided a copy to Mr. Snapp.¹² The fish ticket records the date that the fish were caught as July 1, 1992. The official LLP record shows the date of the harvest of this rockfish as July 5, 1992. While July 1, 1992 is different from July 5, 1992, it is still *after* June 27, 1992, which is the end of the general qualification period for groundfish licenses in 50 C.F.R. § 679.4(k)(4)(i)(B)(1).

I note that this fish ticket shows that, at the same time Mr. Snapp caught this rockfish, he caught 38 pounds of lingcod,¹³ 2,235 pounds of king or chinook salmon, 40 pounds of cohos and 84 pounds of pink salmon. This was primarily a king catch. According to ADFG&G regulations, the chinook summer troll fishery opens on July 1,¹⁴ which makes it quite unlikely that Mr. Snapp caught, iced and kept this single rockfish before the F/V ARDIE went out for the king opening. After reviewing the fish ticket, Mr. Snapp stated that he had no further evidence or argument to submit.¹⁵

I conclude that Mr. Snapp has not shown that the F/V ARDIE harvested LLP groundfish between January 1, 1988 and June 27, 1992. I conclude that Mr. Snapp does not meet the basic general qualification period in 50 C.F.R. § 679.4(k)(4)(i)(B)(1). The regulation extends the general

¹⁰ Letter from Stephen Snapp, June 3, 2002.

¹¹ Final Rule, 63 Fed. Reg. 52,642, 52,648 (Oct. 1, 1998).

¹² Order Adding Documents to Record, July 30, 2002. The fish on this fish ticket were landed on Mr. Snapp’s statewide salmon power troll permit.

¹³ Lingcod is not an LLP groundfish because the TAC for this species is not specified annually pursuant to 50 C.F.R. § 679.20(a)(2).

¹⁴ State regulation 5 AAC 29.070(b) provides: “The department [of Fish and Game] shall manage the chinook salmon troll fishery to provide for: . . . (3) a summer fishery during the period beginning July 1 through September 30, as specified in 5 AAC 29.100.” Although this is the current regulation, the editor’s note states: “Before Register 147, October 1998, the substance of 5 AAC 29.070 was contained in former 5 AAC 30.310, 5 AAC 33.311, and 5 AAC 33.365. The history note for 5 AAC 29.070 does not reflect the history of the provision before Register 147, Oct. 1998.”

¹⁵ Memorandum to File from Mary Alice McKeen, August 2, 2002.

qualification period in two situations, described in the next two sections.

[2] The vessel made one harvest of license limitation groundfish in the Gulf of Alaska between January 1, 1988 and December 31, 1994, if the harvest was with pot or jig gear from a vessel less than 60 feet. [50 C.F.R. § 679.4(k)(4)(i)(B)(2)]

The July 1, 1992 harvest, and others made by the F/V ARDIE, fall within January 1, 1988 and December 31, 1994.¹⁶ RAM states the length overall of the F/V ARDIE as 50 feet.¹⁷ But, according to the official LLP record, the F/V ARDIE was not harvesting LLP groundfish with pot or jig gear. Mr. Snapp does not assert any differently.

[3] The vessel made one harvest of license limitation groundfish harvest in the Gulf of Alaska between January 1, 1988 to June 17, 1995; one harvest of BSAI king or Tanner crab between January 1, 1988 and February 9, 1992; and one harvest of any groundfish in the Gulf of Alaska or BSAI between February 10, 1992 and December 11, 1994, with trawl gear or longline gear, except sablefish with fixed gear. [50 C.F.R. § 679.4(k)(4)(i)(B)(3)]

This regulation has three parts. Mr. Snapp satisfies two of the three parts. The F/V ARDIE harvested license limitation groundfish in the GOA between January 1, 1988 and June 17, 1995 and harvested groundfish in GOA or BSAI between February 10, 1992 and December 11, 1994 using trawl or longline gear, and this harvest was not of sablefish with fixed gear.

But the official LLP record does *not* show the F/V ARDIE harvested any king or Tanner crab in BSAI between January 1, 1988 and February 9, 1992. In fact, the official LLP record does not show that the F/V ARDIE harvested any BSAI king or Tanner crab from 1988 through 1999. Without the crab harvest, the F/V ARDIE does not satisfy this way of meeting the general qualification period.¹⁸

I note that the F/V ARDIE *does* meet the harvest requirement for the endorsement qualification period for an LLP license with a Southeast Outside endorsement: a vessel under sixty feet must make two harvests of any amount of license limitation groundfish in the Southeast Outside area in each of any two calendar years beginning January 1, 1992 to June 17, 1995. [50 C.F.R. § 679.4(k)(4)(ii)(M)] The F/V ARDIE harvested rockfish in 1992 and 1993.

¹⁶ The official LLP record shows the F/V ARDIE harvested rockfish on July 9 and July 19, 1993.

¹⁷ Notice of Opportunity to Submit Evidence at 1, Feb. 9, 2000.

¹⁸ The regulatory history refers to this provision as applying to those applicants “whose qualifying vessel ‘crossed-over’ to groundfish from crab under the provisions of the current Vessel Moratorium by June 17, 1995.” Final Rule, 63 Fed. Reg. 52,642, 52,643 (Oct. 1, 1998). The Vessel Moratorium Program was the predecessor program to the LLP.

But an applicant must meet *both* the general qualification period requirement and the endorsement qualification period requirement. Since Mr. Snapp has not shown that the F/V ARDIE made a harvest within the general qualification period, I conclude that Mr. Snapp does not qualify for an LLP groundfish license with a Southeast Outside endorsement based on the fishing history of the F/V ARDIE.

FINDINGS OF FACT

1. The F/V ARDIE did not make a documented harvest of LLP groundfish between January 1, 1988 and June 27, 1992.
2. The F/V ARDIE did not make a documented harvest of LLP groundfish between January 1, 1988 and December 31, 1994 with pot or jig gear.
3. The F/V ARDIE did not make a documented harvest of king or Tanner crab in BSAI between January 1, 1988 and February 9, 1992.

CONCLUSION OF LAW

Mr. Snapp does not qualify for an LLP groundfish license with a Southeast Outside endorsement, based on the fishing history of the F/V ARDIE.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect September 3, 2002, unless by that date the Regional Administrator orders review of the Decision.

Any party 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, August 12, 2002. 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 points and authorities in support of the motion.

Mary Alice McKeen
Appeals Officer