

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 03-0028
)	
KEVIN SEABECK,)	DECISION
Appellant)	
_____)	December 17, 2007

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on September, 10, 2003, that denied Mr. Seabeck's application for a groundfish license under the North Pacific Groundfish and Crab License Limitation Program (LLP) based on the fishing history of the F/V VIEWPOINT (ADF&G #19501).

Mr. Seabeck filed a timely appeal of the IAD. He was given additional time, until December 15, 2004, to supplement his appeal,¹ but he did not do so. Mr. Seabeck can file an appeal in this case because the IAD directly and adversely affects his interests. [50 C.F.R. § 679.43(b)]

Mr. Seabeck does not request an oral hearing, nor is an oral hearing is authorized in this case because the appeal does not meet the requirements of 50 C.F.R. §679.43(g)(3).² The record contains sufficient information to decide this appeal, and therefore the record is now closed. 50 C.F.R. §679.43(g)(2).

ISSUE

¹ Order Granting Extension To Supplement Appeal With Pleadings And Evidence (Nov. 21, 2003).

²(g) The appellate officer will review the applicant's appeal and request for hearing, and has discretion to proceed as follows: * * *

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following: (i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law. (ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions. (iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the way sought by the applicant. A hearing will not be ordered if the evidence described is insufficient to justify the factual determination sought, even if accurate. (iv) Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

Is Mr. Seabeck an “eligible applicant” for an LLP groundfish license based on ownership of the LLP qualifying fishing history of F/V VIEWPOINT?

ANALYSIS

To be considered an “eligible applicant” for an LLP groundfish license, an applicant must demonstrate that the applicant (1) owned a vessel on June 17, 1995, which has LLP qualifying fishing history; or (2) owns the LLP qualifying fishing history of a vessel based on the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained .³

A vessel has LLP qualifying fishing history if it made the requisite documented harvests of groundfish during (1) the general qualifying period, which is January 1, 1988, through June 27, 1992;⁴ and (2) the endorsement qualifying period for which the applicant is applying, which would be between January 1, 1992, through June 17, 1995.⁵

RAM denied Mr. Seabeck’s application for an LLP groundfish license because he (1) did not own the F/V VIEWPOINT on June 17, 1995;⁶ and (2) does not have a written contract which clearly and unambiguously shows that he owns the LLP qualifying fishing history of the vessel.⁷ Mr. Seabeck acknowledges that he did not own the F/V VIEWPOINT on June 17, 1995, but claims that he owns the LLP qualifying fishing history of the vessel because the language of the

³ Definition of “eligible applicant” at 50 C.F.R. § 679.2. An “eligible applicant” is a qualified person who submitted an application during the application period announced by NMFS and:

(1) For a groundfish license or crab species license, who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the conformance with the provisions in paragraph (2) of this definition; or

(2) For a groundfish license or crab species license, to whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained ...

⁴ 50 C.F.R. § 679.4(k)(4)(i).

⁵ 50 C.F.R. § 679.4(k)(4)(ii).

⁶ IAD at 2.

⁷ IAD at 3 and 4.

earnest money agreement and bill of sale for the vessel clearly and unambiguously shows that he retained all of the LLP qualifying fishing history of the F/V VIEWPOINT when he sold the vessel to Mr. John R. Liddicoat on March 24, 1991.⁸

Even though the LLP did not exist in 1991, Mr. Seabeck still could have legally acquired the LLP qualifying fishing history of the F/V VIEWPOINT when he sold the vessel to Mr. Liddicoat. As a matter of law, parties can legally contract with respect to future rights, and interests, property, or licenses that are not yet in existence.⁹ There is nothing in the LLP regulations or regulatory history that prohibits, or evidences an intent to prohibit, NMFS from recognizing written contracts executed before the adoption of the LLP.

The language in the earnest money agreement for the F/V VIEWPOINT states that “[a]ll rights, awards, concerning groundfish I.T.Q. shall be retained by seller.” The language in the bill of sale does not mention the vessel’s fishing history, but provides only that the sale of the F/V VIEWPOINT be in accordance with the terms of the earnest money agreement.

The earnest money agreement does not describe or define “groundfish I.T.Q.” I presume that the term “groundfish I.T.Q.” refers to “Individual Transferable Quotas,” which were part of one of the alternative proposals that the Council considered, but did not adopt, in the comprehensive rationalization plan for the management of groundfish in the Bering Sea and Aleutian Islands off Alaska.¹⁰

Even so, it is not clearly evident from the language in the earnest money agreement and bill of sale that the parties to the sale of the F/V VIEWPOINT intended for the *LLP* qualifying fishing history of the vessel to remain in the hands of the seller, Mr. Seabeck. The documents provide only that “[a]ll rights, awards, *concerning groundfish I.T.Q.*” be retained by him.

In light of all of this, I find that the language in the earnest money agreement and bill of sale for the F/V VIEWPOINT does not clearly and unambiguously show that Mr. Seabeck retained the LLP qualifying fishing history of the vessel, when he sold the vessel on March 24, 1991. The only fishing history that he retained was fishing history relating to “groundfish I.T.Q.,” which does not exist.

I conclude that Mr. Seabeck does not own the LLP qualifying fishing history of the F/V VIEWPOINT and that he is therefore not an “eligible applicant” for an LLP groundfish license based on the fishing history of the vessel.

⁸ Mr. Seabeck’s letter to NMFS, which RAM received on November 22, 1999.

⁹ *Yukon Queen Fisheries, LLC*, Appeal No. 96-0009, at 5, (Sept. 17, 1998).

¹⁰ North Pacific Fishery Management Council Newsletter, at 12, (Dec. 22, 1992); and the preamble for the LLP at 63 Fed. Reg. 52,642 (Oct. 1, 1998).

FINDING OF FACT

The language in the earnest money agreement and bill of sale for the F/V VIEWPOINT does not clearly and unambiguously show that Mr. Seabeck retained the LLP qualifying fishing history of the vessel, when he sold the vessel on March 24, 1991; the only fishing history that he retained was fishing history relating to “groundfish I.T.Q.,” which does not exist.

CONCLUSION OF LAW

Mr. Seabeck does not own the LLP qualifying fishing history of the F/V VIEWPOINT and he is therefore not an “eligible applicant” for an LLP groundfish license based on the fishing history of the vessel.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect on January 16, 2008, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. §679.43(o).

Mr. Seabeck 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, December 27, 2007. 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 Administrative Judge, and must be accompanied by a written statement in support of the motion.

Randall J. Moen
Administrative Judge