

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 01-0006
)	
DAVID R. WILSON, SR.,)	DECISION
Appellant)	
_____)	February 7, 2003

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) that approved Mr. Wilson's application for a groundfish license and a crab license under the North Pacific Groundfish and Crab License Limitation Program (LLP), as the owner of the catcher/vessel F/V DESTINATION, an LLP qualifying vessel.

The IAD endorsed Mr. Wilson's LLP groundfish license for the Bering Sea and the Western Gulf of Alaska, but denied an endorsement for the Aleutian Islands. The IAD also endorsed Mr. Wilson's LLP crab license for Bristol Bay red king crab, Pribilof red and blue king crab, Bering Sea/Aleutian Islands (BSAI) opilio and bairdi crab, and St. Matthew blue king crab. The IAD denied Mr. Wilson's claims regarding the length overall (LOA) of the F/V DESTINATION, and determined that the LOA stated in NMFS's official LLP record will be specified on the LLP licenses.

Mr. Wilson has filed a timely appeal of the IAD. He is authorized to file an appeal because the IAD directly and adversely affects his interests. [50 C.F.R. § 679.43(b)] An oral hearing is not necessary in this case because the record contains sufficient information on which to reach a final decision. [50 C.F.R. § 679.43(g)(3)]

ISSUES

1. Does Mr. Wilson's LLP groundfish license qualify for an Aleutian Islands groundfish endorsement, based on an "unavoidable circumstance"?
2. Does the LOA of the F/V DESTINATION support an increase in the 124-foot MLOA specified on Mr. Wilson's LLP groundfish and crab licenses?

ANALYSIS

1. Does Mr. Wilson's LLP groundfish license qualify for an Aleutian Islands groundfish endorsement, based on an "unavoidable circumstance"?

To qualify for an Aleutian Islands groundfish endorsement, Mr. Wilson must establish that the F/V DESTINATION made at least one "documented harvest" of Aleutian Islands groundfish

between January 1, 1992, and June 17, 1995.¹

If the F/V DESTINATION did not make the requisite documented harvest of groundfish, the vessel may still qualify for an LLP endorsement by establishing that the vessel was unable to make a documented harvest of groundfish because of an unavoidable circumstance.²

Under the unavoidable circumstance exception, the F/V DESTINATION must have made at least one documented harvest of Aleutian Islands groundfish *after* the unavoidable circumstance, but *before* June 17, 1995.³

The purpose of the “unavoidable circumstance” exception is to provide relief to LLP applicants who intended to harvest LLP groundfish and were prevented from doing so because of an unavoidable circumstance, but who were able to re-enter the LLP groundfish fishery and make at least one landing of LLP groundfish before June 17, 1995.⁴

A “documented harvest” of LLP crab or groundfish is a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvest.⁵

Evidence of a “documented harvest” of LLP groundfish must be demonstrated by a state fish ticket, 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.⁶

The official LLP record does not show that the F/V DESTINATION harvested groundfish in the Aleutian Islands between January 1, 1992, and June 17, 1995. Mr. Wilson claims that he has state fish tickets for harvests of the fish, but he did not produce the fish tickets, nor did he produce a Federal catch report or other document that shows the fishing history of the F/V DESTINATION. Therefore, I find the F/V DESTINATION did not make a documented harvest of Aleutian Islands groundfish during the required endorsement qualification period.

¹50 C.F.R. § 679.4(k)(4)(ii)(A).

²50 C.F.R. § 679.4(k)(8)(iv).

³50 C.F.R. § 679.4(k)(8)(iv)(E).

⁴June 15, 1995, was the date that the North Pacific Fishery Management Council adopted the LLP. *See* the minutes of the Council meeting of June 15, 1995.

⁵50 C.F.R. § 679.2.

⁶50 C.F.R. § 679.4(k)(4).

Mr. Wilson claims that “I fished the vessel one year and the next year our market would not go back out to Adak, so we did not have a market there.” [Appeal pleading] I interpret this as a claim that the vessel did not make a documented harvest of Aleutian Islands groundfish between January 1, 1992, and June 17, 1995, because it was unprofitable to do so. Even if that is true, and even if an unprofitable market could be construed as an unavoidable circumstance under 50 C.F.R. § 679.4(k)(8)(iv), the record on appeal does not contain any evidence showing that the F/V DESTINATION made a documented harvest of Aleutian Islands groundfish after the alleged unavoidable circumstance but before June 17, 1995, as required by paragraph (iv)(E) of the regulation. As a result, I conclude that Mr. Wilson's groundfish license does not qualify for an Aleutian Islands groundfish endorsement, based on an “unavoidable circumstance.”

2. Does the LOA of the F/V DESTINATION support an increase in the 124-foot MLOA specified on Mr. Wilson’s LLP groundfish and crab licenses?

LLP regulations limit the size of vessels that can be used with a particular LLP license by specifying a maximum length overall (MLOA) on the license.⁷ The MLOA is based on the historical length overall (LOA)⁸ of the qualifying vessel whose fishing history gave rise to the license. The regulations require RAM to calculate the MLOA for Mr. Wilson’s licenses by adding 20 percent to the LOA of the F/V DESTINATION on June 24, 1992. The MLOA may be further limited, depending on the LOA of the vessel on June 17, 1995.⁹

Using the data in its official LLP record, RAM determined that the LOA of the F/V DESTINATION on June 24, 1992, and on June 17, 1995, was 104 feet, and that the vessel’s current LOA is 109 feet.¹⁰ The LOA measurements in the official LLP record are based on information reported to the State of Alaska or to NMFS by an applicant for a state or federal license or permit. The applicant is not required to produce documentation to verify the length of a vessel to obtain a state or federal license or permit. The length of a vessel is based solely on the word of the applicant. RAM acknowledges that the official LLP record may not be correct. Nevertheless, the official LLP record is presumed to be correct, unless an applicant for an LLP license produces contrary evidence.¹¹

On appeal, Mr. Wilson does not challenge RAM’s determination that the F/V DESTINATION was 104 feet LOA on June 24, 1992, but he claims that the LOA of the vessel was lengthened in 1993 from 104 feet to 110 feet, and that the LOA is still 110 feet.

⁷50 C.F.R. § 679.4(k)(3)(i).

⁸The “LOA” of a vessel is defined in 50 C.F.R. § 679.2.

⁹50 C.F.R. § 679.2 (definition of “Maximum LOA (MLOA)”).

¹⁰“Notice of Opportunity to Submit Evidence,” December 15, 1999, at 2.

¹¹See the Instructions for the LLP Application at pages 6-7, September 1999.

For a vessel that was lengthened before June 17, 1995, NMFS requires evidence of the date the vessel was lengthened and the LOA of the vessel before and after that date. Evidence bearing upon the vessel's LOA on the relevant dates could consist of a past marine survey, an original builder's certificate, any admeasurement documents submitted to the U.S. Coast Guard National Vessel Documentation Center, a certificate of registration that states the vessel's length, or other credible evidence.¹²

On appeal, Mr. Wilson produced a trim and stability report for the F/V DESTINATION from Richard W. Etsell, a professional engineer. The report shows that the LOA of the vessel was increased from 104 feet to 110 feet on October 17, 1993. Mr. Wilson did not produce any other documents. I find this document to be credible evidence of the LOA of the vessel at the time the lengthening was completed. Neither the official LLP record, nor the documents on appeal, show that the F/V DESTINATION underwent any further reconstruction after October 17, 1993. Therefore, based on the preponderance of evidence in the record, I find that the LOA of the F/V DESTINATION was 110 feet on June 17, 1995, and that the LOA of the vessel is currently 110 feet. NMFS's official LLP record should be corrected to reflect these findings.

These findings, however, do not support any change in the 124-foot MLOA on Mr. Wilson's LLP licenses. Despite the lengthening of the F/V DESTINATION in 1993, the MLOA must still be based on LOA of the vessel on June 24, 1992. Since Mr. Wilson has not challenged RAM's determination that the LOA of the F/V DESTINATION on June 24, 1992 was 104 feet, the official LLP record is still presumed to be correct on this point. Multiplying the 104-foot LOA by 1.2 produces an MLOA of 124.8 feet, which is rounded up to 125 feet. In this case, however, the MLOA cannot exceed 124 feet because on June 17, 1995, the LOA of the vessel was still greater than or equal to 60 feet but less than 125 feet. Because of this fact, I conclude that even if the MLOA were based on an LOA of 110 feet, the MLOA would still be limited to 124 feet.

FINDINGS OF FACT

1. The F/V DESTINATION did not a documented harvest of Aleutian Islands groundfish between January 1, 1992 and June 17, 1995.
2. The LOA of the F/V DESTINATION was 110 feet on June 17, 1995, and is currently 110 feet.

CONCLUSIONS OF LAW

1. Mr. Wilson's LLP groundfish license does not qualify for an Aleutian Islands groundfish endorsement, based on an unavoidable circumstance.
2. The LOA of the F/V DESTINATION does not support an increase in the 124-foot MLOA

¹²63 Fed. Reg. 52,644 (October 1, 1998).

specified on Mr. Wilson's LLP groundfish and crab licenses.

DISPOSITION AND ORDER

The IAD is VACATED IN PART, insofar as it denies Mr. Wilson's claims that the LOA of the F/V DESTINATION was 110 feet on June 17, 1995, and is currently 110 feet. RAM is ORDERED to amend the official LLP record to show that the LOA of the F/V DESTINATION was 110 feet on June 17, 1995, and is currently 110 feet. The remainder of the IAD is AFFIRMED. This Decision takes effect March 10, 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 18, 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.

Randall J. Moen
Appeals Officer