

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	
)	Appeal No. 01-0016
ROBERT K. HURST,)	
F/V JENNIE GIRL,)	DECISION
ADF&G # 46851,)	
Appellant)	June 25, 2002
_____)	

STATEMENT OF THE CASE

Robert K. Hurst filed a timely appeal of an Initial Administrative Determination (IAD) issued by the Restricted Access Management (RAM) program relating to his application for a groundfish license under the North Pacific Groundfish and Crab License Limitation Program (LLP). Mr. Hurst challenges RAM's determination that his LLP qualifying vessel, the catcher/vessel F/V JENNIE GIRL, had, on June 24, 1992, a length overall (LOA) of 38 feet, instead of the 44 feet he claims.

Mr. Hurst is authorized to file an appeal because his interest in an LLP groundfish license is directly and adversely affected by the IAD, as required by 50 C.F.R. §679.43(b). RAM issued a non-transferable interim LLP groundfish license to Mr. Hurst, pending final agency action of his application.

An oral hearing is not necessary in this case because the record contains sufficient information on which to reach a final decision.

ISSUE

Is Mr. Hurst's LLP groundfish license required to be designated with a maximum LOA (MLOA) of a vessel, based on an LOA of 44 feet?

ANALYSIS

The LLP regulations provide that an LLP license may only be used on a vessel that has an LOA less than or equal to the maximum LOA (MLOA) specified on the license.¹ The "MLOA" that is to be designated on an LLP license is the LOA of the LLP qualifying vessel (1) on June 24, 1992, times 120%, or 125 feet, whichever is less, if the vessel was less than 125 feet on June 24, 1992; or (2) upon date of completion if the vessel was under reconstruction on June 24, 1992.²

¹See the definitions of "LOA" and "MLOA" at 50 C.F.R § 679.2.

²See the definition of "MLOA" at 50 C.F.R. § 679.2.

Evidence of a vessel's LOA may 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.³

The official LLP record shows that the LOA of the F/V JENNIE GIRL is currently 38 feet and that the LOA of the vessel was 38 feet on June 24, 1992.⁴ Mr. Hurst claims that the LOA of the F/V JENNIE GIRL is 44 feet, and that the LOA of the vessel was 44 feet on June 24, 1992.

The LOA of a vessel in the official LLP record is based on information reported to the State of Alaska or 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 information in the official LLP record may not be correct. Nevertheless, the record is presumed to be correct, and an applicant for an LLP license bears the burden of producing contrary evidence to correct the record.⁵

Mr. Hurst produced a U.S. Coast Guard boarding report dated October 4, 1992, a NMFS application for a federal fisheries permit dated January 1, 1995, and a City of Whittier personal property tax assessment dated July 1, 2000. The documents show that the LOA of the F/V JENNIE GIRL was 44 feet as of those dates.

Upon our request, the National Vessel Documentation Center of the United States Coast Guard also produced two Builder's Certificates that show the vessel was 44 feet LOA on August 1, 1982, and November 18, 1982; and a Certificate of Admeasurement dated September, 13, 1982, that shows the register length of the F/V JENNIE GIRL at 39.9 feet.

The builder certifications for the F/V JENNIE GIRL, and the other documents produced by Mr. Hurst, show that the vessel was 44 feet both before and after June 24, 1992. Mr. Hurst states in his LLP application that the F/V JENNIE GIRL was not under reconstruction on June 24, 1992; and the evidence in the record does not indicate that the length of the vessel was altered or modified before or after June 24, 1992. Collectively, the builder's certifications, the U.S. Coast Guard's boarding report, and the City of Whittier's tax assessment of the F/V JENNIE GIRL, are better evidence of the vessel's LOA on June 24, 1992, than the LOA reported in the official LLP record. Consequently, based on the preponderance of evidence, I find that the LOA of the F/V

³See 63 Fed. Reg. 52,644-52,645 (October 1, 1998)

⁴See the LLP Qualifications Summary for Mr. Hurst, as the qualifying owner of the F/V JENNIE GIRL.

⁵See the Instructions for the LLP Application, at pages 6-7, September 1999.

JENNIE GIRL on June 24, 1992, was 44 feet. Therefore, I conclude that RAM is required to designate Mr. Hurst's LLP groundfish license with an MLOA based on an LOA of 44 feet.

FINDING OF FACT

The LOA of the F/V JENNIE GIRL was 44 feet on June 24, 1992.

CONCLUSION OF LAW

RAM is required to designate Mr. Hurst's LLP groundfish license with an MLOA based on an LOA of 44 feet.

DISPOSITION AND ORDER

The IAD that is the subject of this appeal is VACATED. RAM is ORDERED to designate Mr. Hurst's LLP groundfish license with an MLOA based on an LOA of 44 feet. This Decision takes effect on July 25, 2002, unless by that date the Regional Administrator orders review of the Decision.

Any party, and 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, on July 5, 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 of points and authorities in support of the motion.

Randall J. Moen
Appeals Officer