

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 02-0002
)	
VICTOR and LOIS MULLEN)	DECISION
F/V JADE ALASKA,)	
Appellants)	July 23, 2004
_____)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) issued an Initial Administrative Determination (IAD) on October 24, 2001, that revoked Appellants crab license under the North Pacific Groundfish and Crab License Limitation Program (LLP). The IAD revoked the license because the NMFS official LLP record does not show that Appellants' original qualifying vessel, the F/V JADE ALASKA, made at least one documented harvest of crab in the Bering Sea and Aleutian Islands (BSAI) during the "Recent Participation Period" (RPP), January 1, 1996 through February 7, 1998.

In a letter dated January 25, 2002, RAM construed telephone conversations and a letter from the Appellants as the equivalent of a timely filed Request for Reconsideration of the IAD. RAM denied the request and referred the matter to this office. We accepted the matter as a timely-filed appeal.

The Appellants' interests are directly and adversely affected by the IAD. [50 C.F.R. § 679.43(b)] An oral hearing was not held and the record is closed because the information on the record is sufficient to render a decision. [50 C.F.R. § 679.43(m)(4)]

ISSUE

Do Appellants qualify under the RPP requirements to retain LLP crab license #LLC1792 as a valid and transferable license?

ANALYSIS

RAM issued LLP crab license #LLC1792 to the Appellants in December 1999, based on their ownership of the F/V JADE ALASKA. The license includes area/species endorsements for the BSAI *C. Opilio* and *C. bairdi* (Tanner) crab and Bristol Bay red king crab fisheries, based on the vessel's fishing history, which satisfied the general qualifying period and the endorsement qualifying period requirements.¹

¹50 C.F.R. § 679.4(k)(5)(i) and 50 C.F.R. § 679.4(k)(5)(ii).

On October 24, 2001, on the same day the IAD was issued, and almost three years after the Appellants had received their license, a new recent participation requirement for LLP crab license holders took effect.² The purpose of the RPP requirement was to reduce the size of the BSAI crab fleet by eliminating licenses held by persons who had been inactive in the crab fishery since 1995.³

To retain their license under this requirement, Appellants must establish that they made at least one documented harvest of LLP crab species⁴ during the RPP and that, at the time of the harvest, they held the qualifying fishing history of the F/V JADE ALASKA.⁵ Alternatively, Appellants must show that they meet one of the exceptions to the RPP,⁶ or that they qualify to retain their license under the unavoidable circumstances provision.⁷

The official LLP record does not show, and the Appellants do not claim, that they made any documented harvests of LLP crab species during the RPP. Rather, the Appellants state that they did not participate during the RPP because they had a commitment to tender grey cod for a cannery that they had been committed to for 14 years, and because they were fishing halibut in Bristol Bay. In addition, the Appellants argue that they should be compensated by NMFS for taking away their livelihood and that of their son, who has operated the boat since 1997 and who supports a wife, four children, and the Appellants. The Appellants state that their son was in the process of upgrading their boat when they learned to their surprise that their license was being revoked.⁸

None of the three RPP exceptions in 50 C.F.R. § 679.4(k)(5)(iii)(B) apply to the Appellants. Their vessel's fishing history does not qualify for the Norton Sound red and blue king area/species endorsement; the vessel exceeds the vessel length for category "C"; and their vessel was not lost or destroyed. The exemption of 50 C.F.R. § 679.4(k)(5)(iv) does not apply to the Appellants because they did not make a documented harvest of LLP crab species between January 1, 1998 and February 7, 1998. Nor do the Appellants qualify under the unavoidable

²Final Rule, 66 Fed. Reg. 48,813-48,822 (Sept. 24, 2001).

³*Id.* at 48,814. The RPP requirements were adopted by the North Pacific Fishery Management Council in October 1998, but were not implemented in regulation for another three years. At the time the Council voted, the period January 1, 1996 through February 7, 1998 was, in fact, a "recent" period.

⁴LLP crab species are BSAI king and Tanner crab. 50 C.F.R. § 679.2 definition of "crab species."

⁵50 C.F.R. § 679.4(k)(5)(iii).

⁶50 C.F.R. § 679.4(k)(5)(iii)(B) and (iv).

⁷50 C.F.R. § 679.4(k)(5)(v).

⁸Appellants' letter to RAM, January 24, 2002.

circumstances provision, 50 C.F.R. § 679.4(k)(5)(v), because there is no evidence in the record, and they did not claim, that they had intended to conduct directed fishing for crab during the RPP but were thwarted by an unavoidable circumstance. The evidence shows only that the Appellants chose to fish halibut in Bristol Bay and to keep their commitment to tender grey cod with their processor. I find that this does not constitute evidence of a thwarted intent to fish crab in the BSAI, and I conclude, therefore, that the Appellants do not meet the requirements of the unavoidable circumstances provision. I conclude that the Appellants do not qualify under the RPP requirements to retain LLP crab license #LLC1792 as a valid and transferable license.

The Appellants' claim for compensation for the loss of their livelihood is not provided for in the LLP regulations and cannot be addressed in this forum, as I do not have the legal authority to grant such relief.

FINDINGS OF FACT

1. The Appellants did not make a documented harvest of LLP crab in the BSAI during the RPP.
2. The Appellants did not have an intent to conduct directed fishing for crab during the RPP that was thwarted by an unavoidable circumstance.

CONCLUSIONS OF LAW

1. The Appellants do not meet the requirements of the unavoidable circumstances provision.
2. The Appellants do not qualify under the RPP requirements to retain LLP crab license #LLC1792 as a valid and transferable license.

DISPOSITION

The IAD that is the subject of this Appeal is AFFIRMED. This Decision takes effect August 23, 2004, unless by that date the Regional Administrator orders review of the Decision.

The Appellants 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 2, 2004. 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