

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 02-0011
	)	
OCEAN CREST FISHERIES, INC.,	)	DECISION
Appellant	)	
_____	)	November 26, 2002

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on May 7, 2002, that denied the Appellant's application under the North Pacific Groundfish and Crab License Limitation Program (LLP) for a groundfish license with endorsements for the Aleutian Islands, Bering Sea, Central Gulf, Southeast Outside, and Western Gulf, groundfish fisheries. The application for the groundfish license and the endorsements is based on the qualifying fishing history of the Appellant's vessel, the F/V CREST.

The Appellant filed a timely appeal of the IAD. The Appellant can appeal the IAD because the IAD directly and adversely affects the Appellant's interests. An oral hearing is not necessary in this case because the facts, even if true, do not justify granting relief. [50 C.F.R. § 679.43(g)(3)]

ISSUE

Does the Appellant qualify for an LLP groundfish license, based on an "unavoidable circumstance"?

ANALYSIS

To qualify for an LLP groundfish license, the Appellant must establish that the F/V CREST made the minimum number of documented harvests of groundfish during (1) the general qualifying period (GQP) for an LLP groundfish license, which, in this instance, is between January 1, 1988, and June 27, 1992;<sup>1</sup> and (2) the endorsement qualifying period (EQP) for the requested endorsements of an LLP groundfish license, which in this case is between January 1, 1992, and June 17, 1995.<sup>2</sup>

If the F/V CREST did not make the requisite documented harvests of groundfish during the relevant endorsement period, the vessel may still qualify for LLP endorsements by establishing that the vessel was unable to make the requisite documented harvests of groundfish because of an

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<sup>1</sup>See 50 C.F.R. § 679.4(k)(4)(i).

<sup>2</sup>See 50 C.F.R. § 679.4(k)(4)(ii).

unavoidable circumstance.<sup>3</sup>

Under the unavoidable circumstance exception, the vessel must have made the requisite documented harvests of LLP groundfish in the appropriate endorsement areas *after* the unavoidable circumstance, but *before* June 17, 1995.<sup>4</sup>

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 fishery and make at least one landing of LLP groundfish before June 17, 1995.<sup>5</sup>

Both the Appellant and RAM agree that the F/V CREST did not make any harvests of groundfish in the Aleutian Islands, Bering Sea, Central Gulf, Southeast Outside District, or Western Gulf areas during the EQP between January 1, 1992, and June 17, 1995. The Appellant claims that the theft of the vessel’s fishing gear in 1990, and the financial difficulties during 1993 and 1994 of a company that owed the Appellant money, prevented the F/V CREST from making a documented harvest of groundfish in the requested endorsement areas during the EQP. Even if that is true, neither of those circumstances can be legally construed as an “unavoidable circumstance” because the record on appeal does not show that the F/V CREST made at least one documented harvest of groundfish in any of the appropriate endorsement areas (the Aleutian Islands, Bering Sea, Central Gulf, Southeast Outside, or Western Gulf management areas) after the alleged events, but before June 17, 1995.

In a number of decisions,<sup>6</sup> we have ruled that the Office of Administrative Appeals does not have the authority to change, modify, or declare unconstitutional, a duly promulgated Federal regulation, and that the authority to do so lies within the jurisdiction of the federal court system. Therefore, I will not determine whether the Appellant may qualify for an LLP groundfish license based solely on financial hardship, when the existing language of the LLP regulations does not provide for it.

I conclude the Appellant does not qualify for an LLP groundfish license, based on an “unavoidable circumstance.”

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<sup>3</sup>50 C.F.R. § 679.4(k)(8)(iv).

<sup>4</sup>50 C.F.R. § 679.4(k)(8)(iv)(E).

<sup>5</sup>That was the date the North Pacific Fishery Management Council adopted the LLP. *See* the minutes of the Council's meeting of June 15, 1995.

<sup>6</sup>*See, e.g.,* LITTLE ANN, INC., Appeal No. 01-0022, July 10, 2002.

## FINDING OF FACT

The F/V CREST did not make at least one documented harvest of groundfish in any of the appropriate endorsement areas (the Aleutian Islands, Bering Sea, Central Gulf, Southeast District Outside, or Western Gulf management areas) during the EQP between January 1, 1992, and June 17, 1995.

## CONCLUSIONS OF LAW

1. Neither the theft of the F/V CREST's fishing gear in 1990, nor the financial difficulties during 1993 and 1994 of a company that owed the Appellant money, can be legally construed as an "unavoidable circumstance" because the record on appeal does not show that the F/V CREST made at least one documented harvest of groundfish in the Aleutian Islands, Bering Sea, Central Gulf, Southeast Outside, or Western Gulf management areas after the alleged events, but before June 17, 1995.
2. The Appellant does not qualify for an LLP groundfish license, based on an "unavoidable circumstance."

## DISPOSITION AND ORDER

The IAD is AFFIRMED. This Decision takes effect on December 26, 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, December 6, 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.

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Randall J. Moen  
Appeals Officer