

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 02-0042
)	
ARCTIC BARUNA, LLC)	DECISION
(formerly Shelikof Maritime, Inc.) ¹)	
Appellant)	August 31, 2004
_____)	

STATEMENT OF THE CASE

The Restricted Access Management Program (RAM) issued an Initial Administrative Determination (IAD) on August 14, 2002, that revoked the License Limitation Program (LLP) crab license (#LLC2120) issued to Shelikof Maritime, Inc., based on the LLP qualifying fishing history of the F/V SHELIKOF. RAM issued an interim and non-transferable LLP crab license to Appellant, pending final agency action with respect to its case.

The IAD revoked the license because the NMFS official LLP record does not show that the vessel made at least one documented harvest of LLP crab in the Bering Sea and Aleutian Islands (BSAI) during the Recent Participation Period (RPP), which is between January 1, 1996, and February 7, 1998.

Appellant filed a timely appeal of the IAD. Appellant can file an appeal because the IAD directly and adversely affects its interests.² An oral hearing is not necessary in this case because the record on appeal contains sufficient information on which to reach a final decision.³

Subsequent to the issuance of the IAD and the filing of this appeal, NMFS revised the regulations that implemented the RPP requirement.⁴ One of the revised regulations, found at 50 C.F.R. § 679.4(k)(5)(iii), will be applied in this appeal.

ISSUE

Does Arctic Baruna, LLC, meet the Recent Participation Period requirements of 50 C.F.R. § 679.4(k)(5)(iii)(A) for LLP crab license #LLC2120?

¹Appellant is the successor to Shelikof Maritime, Inc., which dissolved in May, 2001.

²50 C.F.R. § 679.43(b).

³50 C.F.R. § 679.43(m)(4).

⁴The revised regulations took effect on September 4, 2003. *See* Final Rule, 68 Fed. Reg. 46,117 (August 5, 2003).

ANALYSIS

Federal regulation 50 C.F.R. § 679.4(k)(5)(iii)(A) provides:

(iii) Recent participation period (RPP).

(A) The RPP is the period from January 1, 1996, through February 7, 1998. To qualify for a crab species license, defined at § 679.2, a person must have made at least one documented harvest of any amount of LLP crab species from a vessel during the RPP and must have held a[n] LLP qualifying history at the time of that documented harvest. A[n] LLP qualifying fishing history meets the documented harvest requirements at paragraphs (k)(5)(i) and (k)(5)(ii) of this section.⁵

Although by its wording the regulation appears to establish the qualifications for the initial issuance of an LLP crab license, the regulation actually establishes a recent participation requirement for persons to whom one or more LLP crab licenses have been issued. Thus, the question in this appeal is not whether Appellant initially qualifies for an LLP crab license, but whether the LLP crab license for which Appellant has already qualified, LLP crab license #LLC 2120, should be revoked, given the newly revised RPP requirement.

RAM issued LLP crab license #LLC2120 to the Appellant based on the LLP qualifying fishing history of the F/V SHELIKOF. That vessel did not make a documented harvest of LLP crab during the RPP, but Appellant made documented harvests of LLP crab during the RPP aboard two other vessels, the F/V ARCTIC BARUNA I and the F/V ARCTIC BARUNA II.

RAM determined in the IAD that the RPP fishing histories of the F/V ARCTIC BARUNA I and the F/V ARCTIC BARUNA II have already been used to qualify the Appellant for two LLP crab licenses, which were based on the qualifying fishing histories of F/V SEA PRODUCER and the F/V OCEAN TEMPEST. RAM determined that neither of those fishing histories can be used again to qualify Appellant for another LLP crab license. RAM's determination is based on the previous language and history of the LLP regulations, which RAM interpreted as prohibiting the use of a single vessel's RPP fishing history to qualify for more than one LLP crab license.

In Bella K of Seattle, LLC,⁶ we ruled that the newly revised RPP regulations do not require a person to make a separate RPP documented harvest from a different vessel for each LLP crab license held. Once it is established that the person is a recent participant, i.e., that the person has made one documented harvest of LLP crab during the RPP, the person can retain every LLP crab

⁵50 C.F.R. § 679.4(k)(5)(iii)(A).

⁶Appeal No. 02-0006 at 2, 6 (March 25, 2004).

license associated with the LLP qualifying fishing histories that the person held at the time the RPP harvest was made or, under exception (iv),⁷ during the extended RPP.

In this case, Appellant made documented harvests of LLP crab during the RPP aboard the F/V ARCTIC BARUNA I and the F/V ARCTIC BARUNA II. Therefore, I conclude that the Appellant was a recent participant. At the time of those documented harvests, the Appellant held the LLP qualifying fishing histories of three vessels: the F/V SEA PRODUCER, the F/V OCEAN TEMPEST, and the F/V SHELIKOF. Therefore, I conclude that the Appellant meets the Recent Participation Period requirements of 50 C.F.R. § 679.4(k)(5)(iii)(A) for the LLP crab licenses derived from those qualifying fishing histories, which includes LLP crab license #LLC2120.

FINDINGS OF FACT

1. The Appellant made documented harvests of LLP crab during the RPP aboard the F/V ARCTIC BARUNA I and the F/V ARCTIC BARUNA II.
2. At that time of those documented harvests, the Appellant held the LLP qualifying fishing histories of three vessels: the F/V SEA PRODUCER, the F/V OCEAN TEMPEST, and the F/V SHELIKOF.

CONCLUSIONS OF LAW

1. The Appellant was a recent participant.
2. The Appellant meets the Recent Participation Period requirements of 50 C.F.R. § 679.4(k)(5)(iii)(A) for LLP crab license #LLC2120.

DISPOSITION AND ORDER

The IAD that is the subject of this Appeal is VACATED. RAM is ORDERED to issue LLP crab license #LLC2120 to Appellant as a transferable license. This Decision takes effect September 30, 2004, 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, September 10, 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.

⁷Exception (iv) is found at 50 C.F.R. § 679.4(k)(5)(iv).

Randall J. Moen
Appeals Officer