



The IAD is vacated. Oscar Wilson, Sr., is an eligible applicant for the LLP license based on the fishing history of the F/V NANA JOANN. Mr. Wilson meets the second definition of “eligible applicant” in 50 C.F.R. § 679.2: he is a person to whom the LLP-qualifying fishing history of the F/V NANA JOANN “has been transferred . . . by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained.” Mr. Wilson satisfies this definition by a combination of three documents. An applicant may rely on the combination of several documents to constitute a written contract.

Oscar Wilson, Sr., did not present any evidence or argument that the length overall of the F/V NANA JOANN in the official LLP record is incorrect. Therefore, the length overall of the F/V NANA JOANN is as stated in the official LLP record.

### ISSUES

1. Is Oscar Wilson, Sr., the eligible applicant for an LLP license based on the fishing history of the F/V NANA JOANN?
2. What is the length overall (LOA) of the F/V NANA JOANN?

### ANALYSIS

#### **1. Is Oscar Wilson, Sr., an eligible applicant for an LLP license based on the fishing history of the F/V NANA JOANN? Yes.**

An LLP groundfish license may be issued only to an eligible applicant. The term, “eligible applicant,” is defined in federal regulation 50 C.F.R. § 679.(2). That regulation provides:

Eligible applicant means a qualified person who submitted an application during the application period announced by NMFS and:

(1) Who owned a vessel on June 17, 1995, from which the minimum number of harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) To whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications

for a license under the LLP have been transferred or retained; . . .<sup>4</sup>

Mr. Wilson did not own the F/V NANA JOANN on June 17, 1995. According to the official LLP record, Lawrence Yatchmeneff did.<sup>5</sup> Mr. Wilson therefore does not satisfy the first definition of eligible applicant.

I conclude that Mr. Wilson satisfies the second definition of eligible applicant. I conclude that Mr. Wilson is a person to whom the fishing history of the F/V NANA JOANN “has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained.” [50 C.F.R. § 679.2]

Although the regulation refers to “a written contract,” it would be an unduly restrictive reading of the regulation that an Appeals Officer could not consider several documents in combination to constitute a contract.<sup>6</sup> It is not fatal to an applicant’s claim of ownership of a vessel’s fishing history by a written contract that the applicant relies on several documents rather than one. Here, Mr. Wilson submitted three written documents and I conclude that these documents, taken together, constitute a written contract transferring to Mr. Wilson the fishing history of the F/V NANA JOANN within the meaning of 50 C.F.R. § 679.2.

The first document is the bill of sale, dated December 11, 1995, whereby Lawrence Yatchmeneff and Florence Yatchmeneff sold the F/V NANA JOANN to Oscar Wilson, Sr. and JoAnn Wilson. The bill of sale was a form bill of sale: U.S. Coast Guard form CG-1340 (rev. 9-92). It states that Lawrence Yatchmeneff and Florence Yatchmeneff sold 100% of the vessel to Oscar Wilson and JoAnn Wilson and that:

Vessel is sold free and clear of all liens, mortgages, and other encumbrances of any kind and nature. Except as stated on the reverse hereof, vessel is sold together with an equal interest in the masts, bowsprit, sails, boats, anchorage, cables, tackle, furniture and all other necessities thereto appertaining and

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<sup>4</sup> Federal regulation 50 C.F.R. § 679.2 contains two additional ways a person can be an eligible applicant. One applies to the Norton Sound king crab summery fishery, the other to individuals who can demonstrate eligibility pursuant to the Rehabilitation Act of 1973. Mr. Wilson claims neither.

<sup>5</sup> LLP Qualification Summary for the F/V AMANDA DAWN, now the F/V NANA JOANN. [Exhibit 4] The Abstract of Title for the vessel lists Lawrence and Florence Yatchmeneff as owners of the vessel as of June 17, 1995. [Exhibit 5]

<sup>6</sup> Cf. 50 C.F.R. § 679.43 (j) which describes the standard for evidence in appeals: “All evidence that is relevant, material, reliable, and probative may be included in the record. Formal rules of evidence do not apply to hearings conducted under this section.”

belonging, except as stated on the reverse hereof.<sup>7</sup>

This was the only document submitted to RAM. I agree with RAM's conclusion that this bill of sale has no express terms that can be interpreted as transferring the fishing history of the F/V NANA JOANN to Oscar Wilson or to Oscar Wilson and JoAnn Wilson. If this were the only documentation Mr. Wilson submitted, he would not meet the definition of eligible applicant. But Mr. Wilson submitted additional documentation to this Office. He submitted his own statement:

At the time I purchased the F/V NANA JOANN, it was the understanding of all the parties involved that I was not only purchasing the vessel, but any and all of the past fishing history as well. I was not aware, however, the original bill of sale had to include a specific clause separating this intangible asset from the vessel itself.<sup>8</sup>

He submitted a statement from Mrs. Yatchmeneff:

I reside in King Cove, Alaska.<sup>9</sup> I was the co-owner of the vessel Nana Joann ADF&G number 42389, USCG number 634-122, with my late husband Lawrence Yatchmeneff Sr.<sup>10</sup>

When my husband and I sold the vessel Nana Joann to Oscar Wilson Sr., on December 11, 1995, it was our intent and belief that all rights, title, and interest in the vessel transferred to Mr. Wilson. **This included any fishing rights, and or fishing history, which attached to the vessel before or after the sale. We retained no rights in the vessel.**<sup>11</sup>

Mrs. Yatchmeneff's statement supplies the "express terms of a written contract that clearly and unambiguously provide that the qualification for a license under the LLP have been transferred."<sup>12</sup> The phrase "*any* fishing rights, and or fishing history, which attached to the vessel before or after sale," includes the vessel's LLP-qualifying history.

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<sup>7</sup> Exhibit 1. The reverse side of the Bill of Sale has no exceptions.

<sup>8</sup> Statement of Oscar Wilson, Sr., received by OAA, August 27, 2001. [Exhibit 2]

<sup>9</sup> Mr. Wilson also lives in King Cove, a small village on the Aleutian chain.

<sup>10</sup> Lawrence Yatchmeneff died on June 21, 1998. [Exhibit 6]

<sup>11</sup> Affidavit of Florence Yatchmeneff, August 15, 2001 (emphasis added) [Exhibit 3].

<sup>12</sup> 50 C.F.R. § 679.2 (definition of eligible applicant).

## **2. What is the length overall (LOA) of the F/V NANA JOANN? Thirty-eight feet.**

The LLP application asks applicants to state the LOA (length overall) of their vessels on three dates: June 24, 1992; June 17, 1995; and currently (at the time of application). These dates are significant because NMFS uses a vessel's LOA to determine the MLOA (maximum length overall) on the LLP license that results from the vessel's fishing history.<sup>13</sup> An LLP license holder cannot use an LLP license on a vessel if the vessel's LOA exceeds the MLOA printed on the LLP license.<sup>14</sup>

Mr. Wilson asserted in his application that the length overall of the F/V NANA JOANN was forty-six feet on June 24, 1992, on June 24, 1994 and at the time of application. RAM provided Mr. Wilson with a "Notice of Opportunity to Submit Evidence" which stated that, according to the official LLP record, the LOA of the F/V NANA JOANN was thirty-eight feet.<sup>15</sup> Mr. Wilson did not submit any evidence supporting his claim that the LOA of the F/V NANA JOANN was forty-six feet. Since the IAD did not address the length overall issue, I issued an Order giving Mr. Wilson the opportunity to submit evidence on the LOA of his vessel.<sup>16</sup> Mr. Wilson did not submit any evidence in response to the Order.

The official LLP record is presumed to be correct. An applicant who claims the official LLP record is incorrect has the burden of proving that his or her claims, rather than the official LLP record, are correct.<sup>17</sup> Mr. Wilson has submitted no evidence or argument that the official LLP record is incorrect. I therefore conclude that the length overall of the F/V NANA JOANN is thirty-eight feet.

### FINDINGS OF FACT

1. The three documents submitted by Mr. Wilson – the bill of sale, the statement of Oscar Wilson, Sr., and the statement of Florence Yatchmeneff – constitute a written contract that, by its express terms, transferred the entire fishing history of the F/V NANA JOANN to Mr. Wilson.
2. The length overall of the F/V NANA JOANN is thirty-eight feet.

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<sup>13</sup> 50 C.F.R. § 679.2 (definition of LOA and definition of MLOA for LLP).

<sup>14</sup> 50 C.F.R. § 679.7(j)(6).

<sup>15</sup> Notice of Opportunity to Submit Evidence, December 1, 1999.

<sup>16</sup> Order Adding Document to the Record and Setting Deadline for evidence on Length Overall of Vessel and Other Topics, May 3, 2002.

<sup>17</sup> 50 C.F.R. § 679.2 (definition of official LLP record); 50 C.F.R. § 679.4(k)(6)(v).

## CONCLUSION OF LAW

Oscar Wilson, Sr., is the eligible applicant for the LLP license resulting from the fishing history of the F/V NANA JOANN within the definition of 50 C.F.R. § 679.2

## DISPOSITION

The IAD denying Mr. Wilson's application for an LLP groundfish license based on the fishing history of the F/V NANA JOANN is VACATED. RAM is ordered to accept and process Mr. Wilson's application. This Decision takes effect March 31, 2003.

The appellant or RAM may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m. Alaska Time, on the tenth day after the date of this Decision, March 10, 2003. A Motion for Reconsideration must be in writing, must allege one or more specific, material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement or points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the Decision pending a ruling on the motion or the issuance of a Decision on Reconsideration.

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Mary Alice McKeen  
Appeals Officer