

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 02-0017
	)	
KALDESTAD FISHERIES, LTD.,	)	DECISION
Appellant	)	
_____	)	July 30, 2004

STATEMENT OF THE CASE

The Restricted Access Management (RAM) issued an Initial Administrative Determination (IAD)<sup>1</sup> that revoked Appellant's crab license under the North Pacific Groundfish and Crab License Limitation Program (LLP). The IAD revoked the license because the official LLP record of the National Marine Fisheries Service (NMFS) does not show that Appellant's original LLP qualifying vessel, the F/V NORTHWEST MARINER, made at least one documented harvest of crab in the Bering Sea and Aleutian Islands (BSAI) during the "recent participation period" (RPP), between January 1, 1996, and February 7, 1998. Appellant requested reconsideration of the IAD,<sup>2</sup> but RAM denied the request.<sup>3</sup>

Appellant's appeal is timely filed. Appellant can file an appeal of the IAD because the IAD directly and adversely affects its interests. [50 C.F.R. § 679.43(b)] An oral hearing was not held because I determined that an oral hearing will not help resolve the issue presented in this appeal. [50 C.F.R. § 679.43(n)(1)(ii)] The record is closed because the information on the record is sufficient to render a decision. [50 C.F.R. § 679.43(m)(4) and (n)(8)]

ISSUE

Does Appellant qualify for an LLP crab license, based on the loss or destruction of its original qualifying vessel, the F/V NORTHWEST MARINER, during the RPP?

ANALYSIS

The LLP regulations provide for an applicant to qualify for an LLP crab license, based on ownership of an original LLP qualifying vessel that made at least one documented harvest of LLP crab during the RPP (between January 1, 1996, and February 7, 1998).<sup>4</sup>

---

<sup>1</sup>IAD, October 24, 2001.

<sup>2</sup>Request for Reconsideration of IAD, December 18, 2001.

<sup>3</sup>IAD on Reconsideration, July 12, 2002.

<sup>4</sup>50 C.F.R. § 679.4(k)(5)(i), (ii), and (iii). The RPP requirement is based on Federal law pursuant to the Consolidation Appropriations Act of 2001, Pub. L. No. 106-554 § 144 (December 21, 2000). *See*

Appellant does not dispute that its original qualifying vessel, the F/V NORTHWEST MARINER, did not make at least one documented harvest of LLP during the RPP.

Nevertheless, the LLP regulations still provide for Appellant to qualify for an LLP crab license by establishing that the F/V NORTHWEST MARINER did not make a documented harvest of crab in the BSAI during the RPP because it was lost or destroyed, and that Appellant made a documented harvest of crab in BSAI after the vessel was lost or destroyed but before January 1, 2000.<sup>5</sup>

The applicable language of the “lost or destroyed” vessel exception to the RPP requirement reads in relevant part:

(B) Exceptions to the RPP. A person does not need to meet the documented harvest requirements [during the RPP] ... if ...:

(3) The [person’s original qualifying] vessel ... was lost or destroyed, and ... [the person] made a documented harvest of crab species any time during the period beginning after the vessel was lost or destroyed but before January 1, 2000.

The United States Coast Guard marine accident report for the F/V NORTHWEST MARINER shows that the vessel was lost at sea on January 15, 1995.<sup>6</sup> Both RAM<sup>7</sup> and Appellant<sup>8</sup> acknowledge that Appellant (through Nordic Marine LLC) owned another fishing vessel, the F/V NORDIC MARINER, that made at least one documented harvest of LLP crab during the RPP in late January of 1998, after the sinking of the F/V NORTHWEST MARINER.<sup>9</sup> Therefore, I find that Appellant made a documented harvest of LLP crab during the RPP after its original qualifying vessel, the F/V NORTHWEST MARINER, was lost at sea, but before January 1, 2000.

---

Final Rule, 66 Fed. Reg. 48,816 (September 24, 2001); Proposed Rule, 68 Fed. Reg. 22,668 (April 29, 2003); and Final Rule, 68 Fed. Reg. 46,117 - 46,118 (August 5, 2003) for the regulatory history of the RPP requirement. *See also, Bella K of Seattle, LLC*, Appeal No. 02-0006 (March 25, 2004).

<sup>5</sup>50 C.F.R. § 679.4(k)(5)(iii)(B)(3).

<sup>6</sup>*See* the United States Coast Guard marine accident report for the F/V NORTHWEST MARINER, January 20, 1995.

<sup>7</sup>IAD, at 5.

<sup>8</sup>*See* the signed, but undated, affidavit of Kevin Kaldestad, President of Kaldestad Fisheries, Ltd., and Gordon Kristjanson, President of AMK Fisheries, Inc.

<sup>9</sup>*See* the four State of Alaska fish tickets in the record that Appellant submitted with its December 18, 2001, request for reconsideration of the IAD.

RAM claims that Appellant cannot qualify for an LLP crab license based on the F/V NORDIC MARINER (under any of the exceptions to the RPP requirement) because Appellant used the fishing history of the vessel to qualify for another LLP crab license.<sup>10</sup> RAM argues that to qualify Appellant for another LLP crab license, based on the F/V NORDIC MARINER would violate the intended purpose of the RPP which is to reduce the number of LLP crab licenses, and therefore the number of vessels, that could be used to harvest LLP crab in the BSAI.<sup>11</sup>

The literal language of the “lost or destroyed” vessel exception does not require the applicant to have made a documented harvest of LLP crab with a “non-qualifying” vessel (after the loss or destruction of its original qualifying vessel). All that is required under the language of the exception is for an applicant to establish that its original qualifying vessel was lost or destroyed, and that the applicant (either through ownership of a vessel or the vessel’s fishing history) made a documented harvest of LLP crab from any vessel after the original qualifying vessel’s loss or destruction but before January 1, 2000.<sup>12</sup> The relief afforded to an applicant under the exception is apparently based on the presumption that the applicant would have made a documented harvest of LLP crab during the RPP with the original qualifying vessel if it had not been lost or destroyed. It does not matter, for purposes of this exception, that the Appellant in this case qualifies for another LLP crab license, based on the fishing history of the F/V NORDIC MARINER.

As we concluded in *Bella K of Seattle, LLC*, a person is required to have made only one documented harvest of LLP crab species during the RPP to be considered a recent participant. Once it is established that a person is a recent participant, the person can retain every LLP crab license associated with the LLP qualifying fishing histories the person held at the time the RPP harvest was made or, under exception (iv), during the extended RPP. The “lost or destroyed vessel” exception effectively extends the RPP to January 1, 2000, and allows the owner of a lost or destroyed original qualifying vessel, or its fishing history, to have made the RPP documented harvest with any vessel. The RPP regulations do not require LLP crab license holders to have made a separate RPP documented harvest for each license they want to retain.<sup>13</sup>

The issuance of an LLP crab license to Appellant in this case would be consistent with the regulatory language and obvious purpose of the “lost or destroyed” vessel exception to the RPP requirement. It would provide relief to an applicant who remained “active” in the BSAI crab

---

<sup>10</sup>The IAD, at 5, states that Appellant qualified for an LLP crab license, based on the F/V NORDIC MARINER, with endorsements for Pribilof red and blue king crab, Bristol Bay red king crab, St. Matthews blue king crab, and Bering Sea and Aleutian Islands *C. opilio* and *C. bairdi* (Tanner) crab.

<sup>11</sup>IAD, at 6-9. For the purpose of the RPP requirement, *see* the Council’s October 1998 newsletter and 66 Fed. Reg. 48,814 (September 24, 2001).

<sup>12</sup>66 Fed. Reg. 48,816 (September 24, 2001).

<sup>13</sup>Appeal No. 02-0006, at 13-14 (March 25, 2004).

fisheries after the announcement of the LLP (June 15, 1995), and who would have qualified for an LLP crab license but for the loss of its original qualifying vessel. As a result, I conclude that Appellant qualifies for an LLP crab license, based on the loss or destruction of its original qualifying vessel, the F/V NORTHWEST MARINER, and a subsequent documented harvest of LLP crab species during the extended RPP.

#### FINDING OF FACT

Appellant made a documented harvest of LLP crab during the RPP after its original qualifying vessel, the F/V NORTHWEST MARINER, was lost at sea on January 15, 1995, but before January 1, 2000.

#### CONCLUSION OF LAW

Appellant qualifies for an LLP crab license, based on ownership of its original qualifying vessel, the F/V NORTHWEST MARINER, under the “lost or destroyed” vessel exception to the RPP requirement.

#### DISPOSITION AND ORDER

The IAD that is subject of this Appeal is VACATED. RAM is ORDERED to issue Appellant a transferrable LLP crab license, based on the fishing history of Appellant’s original qualifying vessel, the F/V NORTHWEST MARINER. This Decision takes effect August 30, 2004, 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, August 9, 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