

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 02-0043  
)  
ARCTIC BARUNA, L.L.C., ) DECISION ON RECONSIDERATION  
Appellant )  
) January 21, 2005  
)  
\_\_\_\_\_)

STATEMENT OF THE CASE

On December 22, 2004, this office issued a Decision in this appeal. On January 3, 2005, the deadline for filing a Motion for Reconsideration, the Appellant requested a one-week extension to file the motion. This office granted the request and stayed the effective date of the decision, pending receipt of, and a determination on, the motion. Appellant filed a timely Motion for Reconsideration of the Decision on January 5, 2005.<sup>1</sup>

ISSUE

Should Arctic Baruna, L.L.C. qualify for an LLP crab license based on the combined fishing history of the F/V PACIFIC APOLLO and the F/V OCEANIC?

ANALYSIS

In the Decision, I concluded that Appellant did not qualify for an LLP crab license based on the fishing history of the F/V PACIFIC APOLLO because that fishing history is incomplete and does not constitute an LLP qualifying fishing history. I found that, although the Appellant owned the fishing history of three other vessels that had made the requisite documented harvests for the endorsements sought, none of those vessels could be considered a replacement vessel for the F/V PACIFIC APOLLO because each vessel's fishing history had already been used to qualify for an LLP crab license. Thus, the fishing history of the F/V PACIFIC APOLLO could not be combined with the fishing history of any of the other three vessels to qualify for a license.

I also found that the Appellant did not own the fishing history of any vessels that made the requisite documented harvests of LLP crab to satisfy the requirements of paragraph (E) of the unavoidable circumstance provision of the LLP regulations.<sup>2</sup> To qualify for a license under that provision, the Appellant has to demonstrate that a replacement vessel for the F/V PACIFIC APOLLO made documented harvests of Bering Sea/Aleutian Islands (BSAI) *C. opilio* crab or *C. bairdi* crab and Bristol Bay red king crab *after* the F/V PACIFIC APOLLO sank in October

---

<sup>1</sup>Letter from Lloyd Cannon, Arctic Baruna, L.L.C., to NMFS (Jan. 5, 2005).

<sup>2</sup>50 C.F.R. § 679.4(k)(8)(iv).

1990, but before June 17, 1995.<sup>3</sup>

In its Motion for Reconsideration, the Appellant claims that its predecessor companies, All Alaskan Seafoods, Inc., and Oceanic Fisheries Maritime, Inc., used the F/V OCEANIC (ADFG #65079) as a replacement vessel to make documented harvests of Bristol Bay red king crab and BSAI *C. bairdi* crab in 1993, and BSAI *C. opilio* crab in 1994, all of which were after the F/V PACIFIC APOLLO sank in October 1990 but before June 17, 1995, as required by the unavoidable circumstance provision.<sup>4</sup> On that basis, the Appellant argues that it meets the requirements of the unavoidable circumstance provision and is entitled to an LLP crab license based on the combined fishing history of the two vessels.

In response to the Motion for Reconsideration,<sup>5</sup> I asked the Appellant to produce documents showing that the F/V OCEANIC made the alleged crab harvests in 1993 and 1994. The Appellant replied that it has located the skipper of the F/V OCEANIC during those years, but that it has not received a phone call back from him.<sup>6</sup> The Appellant requests additional time to obtain a release from the skipper so that the Appellant can request confidential fish ticket data from the State of Alaska's Commercial Fisheries Entry Commission (CFEC).<sup>7</sup>

On my own motion, I requested the fishing history of the F/V OCEANIC (ADFG #65079) for the years 1993 - 1994 from NMFS, and for the years 1993 - 1995 from the CFEC. Neither the NMFS official LLP record,<sup>8</sup> nor the fishing records of the CFEC,<sup>9</sup> show that the F/V OCEANIC made any documented harvests of LLP crab during the years in question.

I deny the Appellant's request for additional time to obtain a release from the skipper of the F/V OCEANIC so that it can request fish ticket data from the CFEC. The Appellant, in my judgment, has had sufficient time to produce such evidence and, in any event, the Appellant seeks to duplicate the data search that I have already completed, the results of which do not support the Appellant's claim.

---

<sup>3</sup>Decision at 3 and 4.

<sup>4</sup>Note 1 at 1.

<sup>5</sup>Request for Evidence, January 11, 2005.

<sup>6</sup>Letter from Lloyd Cannon, Appellant, to Randall Moen, Office of Administrative Appeals, at 1 (Jan. 19, 2005).

<sup>7</sup>*Id.*

<sup>8</sup>Electronic mail from Mukhya Khalsa, NMFS, to Randall Moen, Office of Administrative Appeals, January 7, 2005.

<sup>9</sup>Electronic mail and facsimile from Nancy Sloan, CFEC, to Mary Alice McKeen, Office of Administrative Appeals, ( Jan. 20, 2005).

Based on the preponderance of the evidence in the administrative record, I find that the F/V OCEANIC did not make the requisite crab harvests to qualify the Appellant for an LLP crab license under the unavoidable circumstance provision. As a result of this finding, I need not decide – and do not decide – whether the F/V OCEANIC was in fact a replacement vessel for the F/V PACIFIC APOLLO, for the purpose of meeting the unavoidable circumstance provision requirements. I conclude that the Appellant does not qualify for an LLP crab license based on the combined fishing history of the F/V PACIFIC APOLLO and the F/V OCEANIC.

#### FINDINGS OF FACT

1. Neither the NMFS official LLP record, nor the fishing records of the CFEC, show that the F/V OCEANIC made any documented harvests of LLP crab during the years 1993 - 1995.
2. The F/V OCEANIC did not make the requisite crab harvests to qualify the Appellant for an LLP crab license under the unavoidable circumstance provision.

#### CONCLUSION OF LAW

The Appellant does not qualify for an LLP crab license based on the combined fishing history of the F/V PACIFIC APOLLO and the F/V OCEANIC.

#### DISPOSITION

The Decision in this appeal is incorporated into this Decision on Reconsideration by reference. The IAD that is the subject of this appeal is **AFFIRMED** on the grounds stated in the Decision and in this Decision on Reconsideration. This Decision on Reconsideration takes effect February 22, 2005, unless by that date the Regional Administrator orders review of the Decision on Reconsideration.

---

Randall J. Moen  
Appeals Officer