

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
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BEAGLE ENTERPRISES, L.P.,)
Appellant.)
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Appeal No. 03-0009
DECISION
May 19, 2006

Beagle Enterprises, L.P., [Beagle] filed a timely appeal of an Initial Administrative Determination [IAD] that the Restricted Access Management Program [RAM] issued under the North Pacific Groundfish and Crab License Limitation Program [LLP].¹

Beagle applied for an LLP groundfish license based on the fishing history of the F/V BEAGLE (ADFG 41219, USCG 623210), a vessel with a length overall of 107 feet. The F/V BEAGLE is in vessel length category B, a vessel equal to or greater than 60 feet and less than 125 feet.

The IAD acknowledged that Beagle qualifies for an LLP groundfish license (LLG 4360), with a catcher/ processor vessel designation, vessel length category B, and area endorsements for the Bering Sea and the Central Gulf. The IAD denied Beagle an area endorsement for the Western Gulf on LLG 4360.²

Beagle can appeal the IAD because it directly and adversely affects Beagle's interests.³ Beagle did not request a hearing and I did not hold one because no facts are in dispute and the record contains sufficient information to decide this appeal, in accord with federal regulation 50 C.F.R. § 679.43(g). I therefore close the record and issue this decision.

SUMMARY

Beagle Enterprises, L.P., does not qualify for a Western Gulf endorsement on LLG 4360. LLG 4360 has a catcher/processor vessel designation. An applicant qualifies for a Western Gulf endorsement on an LLP license with a catcher/processor vessel designation if either [1] the applicant's vessel made one documented harvest in each of any two calendar years in the Western Gulf between January 1, 1992 and June 17, 1995, under 50 C.F.R. § 679.4(k)(4)(ii)(E),

¹ The LLP is located in federal regulation 50 C.F.R. § 679, primarily 50 C.F.R. § 679.2 (definitions), 50 C.F.R. § 679.4(k)(requirements for licenses) and 50 C.F.R. § 679.43 (appeals). It is available on the NMFS Alaska Region website, <http://www.fakr.noaa.gov/regs/summary.htm>. I refer to RAM's actions as NMFS's actions.

² Until NMFS takes final agency action, Beagle has an interim LLP license with a Western Gulf endorsement and a Bering Sea and a Central Gulf endorsement, in accord with 50 C.F.R. § 679.43(p).

³ 50 C.F.R. § 679.43(b)

or [2] the vessel made four documented harvests in the Western Gulf between January 1, 1995 and June 17, 1995, under 50 C.F.R. § 679.4(k)(4)(ii)(F).

Beagle offers no evidence or argument that the official LLP record is incorrect and that it made one documented harvest in each of two calendar years in the Western Gulf between January 1, 1992 and June 17, 1995. Beagle therefore does not qualify for a Western Gulf endorsement on LLG 4360 under 50 C.F.R. § 679.4(k)(4)(ii)(E).

The dispute is whether Beagle qualifies for a Western Gulf endorsement under 50 C.F.R. § 679.4(k)(4)(ii)(F). To distinguish between catcher/processor vessels that made one, two, three or four documented harvests in the Western Gulf between January 1, 1995 and June 17, 1995, NMFS credited one documented harvest to a catcher/processor vessel for each week that the vessel harvested groundfish. Beagle harvested groundfish in the Western Gulf in one week in 1995 and recorded that activity on a Weekly Production Report dated May 6, 1995. NMFS concluded that Beagle made one documented harvest between January 1, 1995 and June 17, 1995.

Beagle argues that a catcher/processor vessel made one documented harvest for every haul that a catcher/processor vessel made and recorded. Beagle recorded one haul on a Daily Cumulative Production Log, dated May 5, 1995, and three hauls on a Daily Cumulative Production Log, dated May 6, 1995. Therefore, Beagle argues it made four documented harvests between January 1, 1995 and June 17, 1995.

I conclude that the number of weeks of harvesting activity by a catcher/processor vessel is a reasonable interpretation of the four documented harvest requirement in 50 C.F.R. § 679.4(k)(4)(ii)(F). First, the language of the LLP regulations, standing alone, is ambiguous and allows NMFS's or Beagle's interpretation. The LLP regulations do not refer to a week as the criterion for a documented harvest, which is NMFS's interpretation, or a haul, which is Beagle's. Second, NMFS used the standard for a documented harvest that the North Pacific Fishery Management Council used to analyze the LLP and recommend it to the Secretary. Third, NMFS's interpretation furthers the purpose of 50 C.F.R. § 679.4(k)(4)(ii)(F), which was to prevent a catcher/processor vessel from remaining in the Western Gulf based on harvesting activity in the last five and a half months of the EQP, which was possibly opportunistic and speculative and which did not represent a commitment to participate in that fishery. Fourth, NMFS evaluated documented harvests for catcher/processors according to the weekly production reports, which are documents that NMFS used to create the official LLP record.

In the alternative, Beagle requests a Western Gulf endorsement as a catcher vessel. Beagle seeks a catcher/processor vessel designation for the Central Gulf and the Bering Sea and a catcher vessel designation for the Western Gulf. NMFS does not have authority to do this. The LLP license itself has one vessel designation: either a catcher vessel designation *or* a catcher/processor vessel designation. An LLP license is not assigned a vessel designation area-by-area. An LLP license cannot have a catcher vessel designation for one area and a catcher/processor vessel designation for other areas.

The LLP regulation does permit a license holder to make a one-time permanent change in vessel designation. Thus, Beagle could change LLG 4360 from a catcher/processor vessel designation to a catcher vessel designation. Beagle would then qualify for Western Gulf, Central Gulf and Bering Sea endorsements but it could only operate as a catcher vessel. The regulations give Beagle a choice to operate as a catcher/processor in the Central Gulf and the Bering Sea or a catcher vessel in the Western Gulf, Central Gulf and Bering Sea.

ISSUES

1. Does Beagle qualify for a Western Gulf endorsement on LLG 4360 as a catcher/processor vessel under 50 C.F.R. § 679.4(k)(4)(ii)(E), which requires one documented harvest of groundfish in each of any two calendar years between January 1, 1992 and June 17, 1995?
2. Does Beagle qualify for a Western Gulf endorsement on LLG 4360 as a catcher/processor vessel under 50 C.F.R. § 679.4(k)(4)(ii)(F), which requires four documented harvests of groundfish between January 1, 1995 and June 17, 1995?
3. Does Beagle qualify for a Western Gulf endorsement on LLG 4360 as a catcher vessel under 50 C.F.R. § 679.4(k)(ii)(D)?

ANALYSIS

To qualify for a Western Gulf endorsement, an eligible applicant must have owned a vessel on June 17, 1995 that had a qualifying fishing history or must own the qualifying fishing history apart from the vessel.⁴ A qualifying fishing history means that the vessel made specified harvests of license limitation groundfish in a general qualification period [GQP] and endorsement qualification period [EQP].⁵ The IAD concluded that Beagle met the GQP requirement for a Western Gulf endorsement: the F/V BEAGLE made at least one documented harvest of groundfish in the Gulf of Alaska between January 1, 1988 and June 27, 1992.⁶ The IAD concluded that Beagle did not meet any of the endorsement qualification period [EQP] requirements for a Western Gulf endorsement on LLG 4360 in 50 C.F.R. § 679.4(k)(4)(ii).

This appeal requires that I review NMFS's interpretation of the requirements for a Western Gulf

⁴ 50 C.F.R. § 679.2 (definition of eligible applicant).

⁵ 50 C.F.R. § 679.4(k)(4)(i) & (ii). One way to meet the GQP requires a crab harvest. 50 C.F.R. § 679.4(k)(4)(i)(A)(3) & (B)(3). All harvests must be documented harvests, which are lawful harvests recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting. 50 C.F.R. § 679.2. Groundfish and license limitation groundfish have minor differences, *id.*, which are not relevant to this appeal. When I refer to groundfish, I mean license limitation groundfish.

⁶ 50 C.F.R. § 679.4(k)(4)(i)(A)(1). Since Beagle met this GQP requirement, I do not analyze whether it also meets any of the alternate ways to meet the GQP in 50 C.F.R. § 679.4(k)(4).

area endorsement in 50 C.F.R. § 679.4(k)(4)(ii)(F). The Secretary of Commerce adopted this provision, and the entire LLP, pursuant to the process required by the Magnuson-Stevens Fishery Conservation and Management Act [Magnuson-Stevens Act].⁷ The Secretary adopted the LLP provisions, without comment, and exactly as transmitted to him by the North Pacific Fishery Management Council [NPFMC or Council].⁸ I therefore conclude that the intent of NMFS and the Council is the same as the intent of the Secretary and I look to the record developed by the Council and NMFS as evidence of the intent of the Secretary.

An applicant may meet the EQP requirement for a Western Gulf endorsement on an LLP license with a catcher/processor vessel designation in two ways: [1] the vessel made one documented harvest in each of any two calendar years in the Western Gulf between January 1, 1992 through June 17, 1995, according to 50 C.F.R. § 679.4(k)(4)(ii)(E), *or* [2] the vessel made four documented harvests in the Western Gulf between January 1, 1995 through June 17, 1995, according to 50 C.F.R. § 679.4(k)(4)(ii)(F).

RAM found that, according to the official LLP record, Beagle did not make the harvests required for a Western Gulf endorsement under either provision.⁹ RAM found that Beagle submitted one weekly production report dated May 6, 1995, which recorded all the groundfish caught and retained by the F/V BEAGLE in the week ending May 6, 1995.¹⁰ RAM concluded that Beagle made one documented harvest in May 1995 and therefore one documented harvest between January 1, 1995 and June 17, 1995.¹¹

1. Does Beagle qualify for a Western Gulf endorsement on LLG 4360 as a

⁷ Final Rule, 63 Fed. Reg. 52,642 (1998) (substantive requirements for LLP licenses); Final Rule, 64 Fed. Reg. 42,826 (1999) (application and transfers). The Magnuson-Stevens Act is at 16 U.S.C. §§ 1801 - 1883.

⁸ Under 16 U.S.C. § 1853 (c), proposed regulations “which the Council deems necessary or appropriate” are submitted to the Secretary. Under 16 U.S.C. § 1854, upon “transmittal by the Council to the Secretary of proposed regulations,” the Secretary evaluates the regulations and publishes them *or* notifies the Council in writing of any inconsistencies in the regulations and recommends revisions. The Secretary, through NMFS, simply published the LLP regulations.

⁹ IAD at 4.

¹⁰ Tracy Buck, Permit Specialist with RAM, consulted a printout of the vessel’s Weekly Production Report [WPR] data which she obtained from the Sustainable Fisheries Division of NMFS. *Order Regarding Additional Documents and Providing Appellant With Opportunity to Comment* (April 27, 2006). Exhibit 1 to the Order is the WPR summary printout.

¹¹ Amended Notice of Opportunity to Submit Evidence (May 9, 2000).

catcher/processor vessel under 50 C.F.R. § 679.4(k)(4)(ii)(E), which requires one documented harvest of groundfish in each of any two calendar years between January 1, 1992 and June 17, 1995? No.

On appeal, Beagle initially thought it might be able to introduce evidence that the F/V BEAGLE harvested groundfish in the Western Gulf earlier than May 1995.¹² I gave Beagle opportunity to submit additional evidence and argument on that point.¹³

Beagle did not submit evidence or argument that the official LLP record was incorrect and that the F/V BEAGLE made documented harvests in the Western Gulf earlier than May 1995, within the endorsement qualification period, January 1, 1992 to June 17, 1995.¹⁴ I find that the F/V BEAGLE did not make any documented harvests of groundfish in the Western Gulf in the EQP earlier than May 1995. I conclude that Beagle does not qualify for a Western Gulf endorsement on LLG 4360 under 50 C.F.R. § 679.4(k)(4)(ii)(E).

2. Does Beagle qualify for a Western Gulf endorsement on LLG 4360 as a catcher/processor vessel under 50 C.F.R. § 679.4(k)(4)(ii)(F), which requires four documented harvests of groundfish between January 1, 1995 and June 17, 1995? No.

This EQP requirement, and all the EQP requirements, are in table form.¹⁵ Reading 50 C.F.R. § 679.4(k)(4)(ii)(F) as a sentence, it states:

(F) A groundfish license will be assigned a Western Gulf area endorsement if *at least four documented harvests of any amount of license limitation groundfish were made during the period beginning January 1, 1995, through June 17, 1995 in the Western Area of the Gulf of Alaska* or in waters shoreward of that area from a vessel in vessel length category “B” and that meets the requirements for a catcher/processor vessel designation. [emphasis added]

The LLP regulations define a documented harvest as “a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting.”¹⁶ The LLP regulations do not define “a harvest.” The fishing regulations,

¹² Letter from R. Shawn Griggs at 6 - 7 (July 25, 2003).

¹³ *Order Adding Document to the Record and Providing a Deadline for Further Argument and Evidence* at 3 (June 30, 2005).

¹⁴ Letter from R. Shawn Griggs at 4 (July 22, 2005).

¹⁵ 50 C.F.R. § 679.4(k)(4)(ii).

¹⁶ 50 C.F.R. § 679.2.

applicable to all federal programs in the Exclusive Economic Zone [EEZ] off Alaska, define “harvesting or to harvest” as “catching and retaining of any fish.”¹⁷

To implement the LLP, NMFS had to determine how it would distinguish between catcher/processors that made one, two three or four documented harvests of groundfish in the Western Gulf between January 1, 1995 to June 17, 1995. NMFS adopted an operational definition of one documented harvest by a catcher/processor as every week a catcher/processor caught and retained groundfish.¹⁸ NMFS defined a groundfish harvest temporally and defined the beginning and end of a harvest as the beginning and end of a week.

When NMFS examined the official LLP record, it found that Beagle harvested groundfish in the Western Gulf in one week between January 1, 1995 and June 17, 1995 which it recorded on the weekly production report, dated May 6, 1995. NMFS concluded that Beagle made one documented harvest between January 1, 1995 and June 17, 1995.¹⁹

On appeal, Beagle contends that it made four documented harvests between January 1, 1995 and June 17, 1995 within the meaning of 50 C.F.R. § 679.4(k)(4)(ii)(F). An applicant contending that the official LLP record is incorrect has the burden of proving that the applicant, rather than the official LLP record, is correct.²⁰ Beagle argues that NMFS’s standard for counting documented harvests was plainly erroneous. It stated that documented harvests “should be measured on a haul-by-haul basis for catcher/processors.”²¹

Beagle submitted two Daily Cumulative Production Logs [DCPL] for the week ending May 6,

¹⁷ 50 C.F.R. § 679.2. This definition was not adopted as part of the LLP. Final Rule, 63 Fed. Reg. 52,642 (1998); Final Rule, 64 Fed. Reg. 42,826 (1999).

¹⁸ *Alaska Trojan Partnership*, Appeal No. 01-0001 at 24 - 26 (Oct. 20, 2003). This part of *ATP* described how NMFS counted documented harvests of groundfish by catcher/processor vessels. I gave Beagle an opportunity to submit argument on that portion of *ATP*. *Order Adding Document to the Record and Providing a Deadline for Further Argument and Evidence* (June 30, 2005). Beagle did. Letter from R. Shawn Griggs (July 22, 2005). In *ATP*, the applicant appealed NMFS’s denial of an endorsement on an LLP crab license and challenged how NMFS counted documented harvests of crab for catcher vessels in the LLP program. The Ninth Circuit Court of Appeals held that NMFS’s definition of documented harvests of crab for catcher vessels was plainly erroneous. *Alaska Trojan Partnership v. Gutierrez*, 425 F. 3d 620 (9th Cir. 2005). I analyze the court’s decision in *ATP* at pages 8 and 15 *infra*.

¹⁹ Amended Notice of Opportunity to Submit Evidence (May 9, 2000).

²⁰ 50 C.F.R. § 679.4(k)(6)(v).

²¹ Letter from R. Shawn Griggs at 2 (July 22, 2005). Beagle submitted this argument in response to *Order Adding Document to the Record and Providing a Deadline for Further Argument and Evidence* (June 30, 2005).

1995. On the DCPL dated May 5, 1995, Beagle recorded one haul: haul 314. On the DCPL dated May 6, 1995, Beagle recorded three hauls: hauls 315, 316 and 317.²² Therefore, Beagle argues it made four documented harvests in the period January 1, 1995 through June 17, 1995.

In evaluating NMFS's and Beagle's competing interpretations, I conclude that the language of the LLP regulations, standing alone, is ambiguous and admits of both interpretations. I conclude that NMFS's interpretation of the four documented harvest requirement for a Western Gulf endorsement in 50 C.F.R. § 679.4(k)(4)(ii)(F) is reasonable and is superior to Beagle's interpretation. The Ninth Circuit has articulated the reasonableness standard this way. It states that it will uphold the agency's interpretation "as long as it is not plainly erroneous or inconsistent with the regulation."²³ For four reasons, I conclude that NMFS's interpretation is reasonable.

First, the language of the LLP regulations, standing alone, allows NMFS's and Beagle's interpretation. As is common with complex regulatory programs, the language of the LLP regulations, standing alone, does not address all the interstitial questions that arose when the agency had to implement the program.²⁴

The requirement for "four documented harvests" does not explicitly tell NMFS how to distinguish between vessels that made one, two, three or four documented harvests. The definition of "documented harvest" as "a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting" does not tell NMFS whether a particular document records that an applicant made one, two, three, four or more documented harvests. The definition of "harvesting or to harvest" as "catching and retaining of any fish" does not tell NMFS how to determine when a catcher/processor vessel starts a documented harvest, when it ends a documented harvest and when it starts another one.

NMFS argues that a week's harvesting activity is the way to distinguish between catcher/processors that made one, two, three or four documented harvests. Beagle argues it is the act of hauling in gear, and how many times the vessel operator does that, that distinguishes between catcher/processors that made one, two, three or four documented harvests. The bare language of the LLP regulations involved here – the requirement for four documented harvests for a Western Gulf area endorsement in 50 C.F.R. § 679.4(k)(ii)(F), the definition of "a documented harvest" and the definition of "a harvest" – does not refer to either a week or a haul. Beagle noted:

²² Exhibit A to Letter from R. Shawn Griggs (July 25, 2003).

²³ *Wards Cove Packing Corp. v. NMFS*, 307 F.3d 1214, 1218 (9th Cir. 2002)(citations omitted).

²⁴ *See Morton v. Ruiz*, 415 U.S. 199, 231 (1974) ("The power of an administrative agency to administer a congressionally created program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.")

Although the plain language of the license limitation program regulations does not compel that a vessel's documented harvests be measured by the number of hauls or tows of discrete set of gear, that standard provides inclusive criteria for evaluating harvesting activity.²⁵

I agree with the first part of the sentence. The plain language of the regulations does not compel Beagle's definition of documented harvest. The plain language of the regulations does not compel NMFS's definition. The plain language does not exclude Beagle's definition. The plain language does not exclude NMFS's definition. I conclude that the language of the regulations, standing alone, is ambiguous, meaning that it admits of both interpretations. In such a situation, the administrative agency has the discretion, and indeed the responsibility, to choose a reasonable interpretation.²⁶

Beagle asserts that NMFS's interpretation of "documented harvest" is plainly erroneous. Beagle argues that "NMFS's utilization of weekly production reports evaluates a vessel's participation in the fishery on a temporal basis that is wholly unrelated to the degree of harvesting activity undertaken by the vessel."²⁷ I disagree. Granted, NMFS did not key its definition to hauling gear and how many times a vessel hauled and retrieved gear. NMFS based its definition on how many weeks a vessel harvested fish in the Western Gulf. The number of weeks a vessel harvested fish in the Western Gulf is a measure of the degree of harvesting activity undertaken by a vessel.

I acknowledge that certain interpretations would be plainly erroneous and NMFS would not have discretion to use any of those definitions. The Ninth Circuit Court of Appeals in *Alaska Trojan Partnership v. Gutierrez* recently clarified for the agency that the presence of a separate definition of "landing" as "an offloading" means that NMFS cannot define a documented harvest to require a landing or offloading.²⁸ NMFS's interpretation under review here does not define a documented harvest by a catcher/processor vessel in a way that requires a landing or offloading. The beginning and end of a harvest by a catcher/processor vessel is marked by the beginning and end of a week. It does not require that a vessel offload any fish.

Second, NMFS used the criterion for awarding groundfish licenses to catcher/processor vessels that the Council used in adopting the LLP, namely one week of harvesting activity.

²⁵ Letter from R. Shawn Griggs at 3 (July 22, 2005)(emphasis added).

²⁶ *Chevron, U.S.C., Inc., v. Natural Resources Defense Council*, 467 U.S. 837, 843 - 844 (1984), *Cadden v. Levenhagen & Pugh*, Appeal No. 95-0013 at 6 (Jan. 17. 1996).

²⁷ Letter from R. Shawn Griggs at 3 (July 22, 2005).

²⁸ *Alaska Trojan Partnership v. Gutierrez*, 425 F. 3d 620 (9th Cir. 2005). I further analyze this decision at page 15 *infra*.

The Council relied on two analyses in adopting the LLP and recommending it to the Secretary. Before it took final action on the LLP on June 17, 1995, Council staff prepared an Environmental Assessment [EA] of the LLP. The EA was approximately 500 pages and analyzed for the Council different alternatives for key features of the LLP: the nature of the licenses, who could receive licenses, the qualifying period for the licenses and minimum landing requirements for LLP licenses and area endorsements on LLP licenses.²⁹ The EA analyzed how many licenses, with what endorsements, would likely result from different configurations.³⁰ After the Council took final action on the LLP on June 17, 1995, Council staff prepared a detailed “Supplemental Analysis,” to the EA, which analyzed the particular LLP provisions that the Council adopted.³¹

To prepare the EA, the Council specifically approved construction of a database. Appendix IV to the EA for the LLP is “Methods of Construction and Assumptions in the Groundfish and Crab License Limitation Analysis Data Bases.” It states: “Catcher processors were considered to have made *one landing for each week* they were listed in the WKP data.”³² The Appendix does not define “WKP data,” but the reference to “one landing for each week” shows the Council credited one landing for every week’s activity by a catcher/processor.

When NMFS and the Council proposed the LLP rule, the proposed rule awarded a Western Gulf area endorsement to a catcher/processor in the mid-size range if the vessel made four “legal landings” of groundfish in the Western Gulf between January 1, 1995 and June 17, 1995.³³ Under the Council’s definition of landing, this meant a catcher/processor vessel had to have

²⁹ Environmental Assessment [EA]/Regulatory Impact Review for License Limitation Alternatives for the Groundfish and Crab Fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands (NPFMC Staff)(Sept. 9, 1997). The entire EA is on the NMFS Alaska region website: http://www.fakr.noaa.gov/analyses/groundfish/EA_Amendment_39-41-5_Sept_1997.pdf. Overall, it is dated September 9, 1997 but Council staff prepared the EA in September 1994, as shown by the dates on the bottom of the pages in the document and by the content of the document, which analyzed different possible license limitation alternatives for the Council to consider.

³⁰ The Groundfish Table Appendix of 80 pages contains this analysis. It is at pages 364 - 444 of the EA, as the EA is paginated on the NMFS Alaska Region website.

³¹ Draft for Secretarial Review, Supplemental Analysis of Final License Limitation Alternative for the Groundfish Fisheries of the BSAI and GOA and the King and Tanner Crab Fisheries of the BSAI, (NPFMC Staff) (Jan. 16, 1997) << <http://www.fakr/noaa.gov/analyses/llp/suppanalysis011697.pdf>.>> The Supplemental Analysis was approximately 175 pages.

³² Appendix IV to the Environmental Assessment [EA], “Methods of Construction and Assumptions in the Groundfish and Crab License Limitation Databases,” at page 1 (emphasis added). Appendix IV is at pages 293 - 300 of the EA, as paginated on the NMFS Alaska Region website.

³³ Proposed Rule, 62 Fed. Reg. 43,866, 43,887 (1997) *proposed* 50 C.F.R. § 679.4(i)(4)(ii)(E).

fished in the Western Gulf in four different weeks to receive this endorsement.

The Council and NMFS changed the proposed rule. In the final LLP, an applicant receives a Western Gulf area endorsement for a catcher/processor vessel 60 to 125 feet in length if the vessel made four “documented harvests” of groundfish in the Western Gulf between January 1, 1995 and June 17, 1995.³⁴ The Council and NMFS changed “legal landings” to “documented harvests” throughout the entire LLP rule.³⁵

So the question becomes whether the Council’s definition of “a legal landing” by a catcher/processor is the same as the Council’s definition of “a documented harvest” by a catcher/processor. The answer depends on why the Council and NMFS adopted the new term. NMFS explained in the commentary to the final rule:

A definition for the term “documented harvest” is added to the final rule. The term “documented harvest” replaces “legal landing” throughout the final rule. The new term more accurately describes the activity necessary for eligibility. Included in the proposed definition of legal landing was the activity of off-loading. Off-loading is not necessary for eligibility. Further, the area endorsement(s) a person is issued should reflect the area in which fishing occurred, not the area in which the fish was delivered.³⁶

The Council and NMFS did not want eligibility to depend on whether a vessel offloaded. NMFS’s definition of a documented harvest for a catcher/processor does not require offloading. It simply requires that a vessel harvest groundfish at some time in a week and record that harvest. A catcher/processor does not submit a weekly production report when it offloads. A catcher/processor submits a WPR every week, whether or not it offloads. Offloading has nothing to do with whether, and when, a catcher/processor vessel submits a weekly production report. And a catcher/processor reports on a WPR the areas where it caught the fish, not the area where it delivered the fish.³⁷

The Council’s explanation of the term documented harvest does not suggest that it was abandoning its analysis of the LLP in the Environmental Assessment and the Supplemental

³⁴ Final Rule, 63 Fed. Reg. 52,642, 52,655 (1998) *adopting* 50 C.F.R. § 679.4(i)(4)(ii)(E). All references to § 679.4(i) were corrected to § 679.4(k). Correcting Amendments, 63 Fed. Reg. 64,878 (1998).

³⁵ Final Rule, 63 Fed. Reg. 52,642, 52,648 (1998).

³⁶ *Id.*

³⁷ The record does not have the actual WPRs submitted by the F/V BEAGLE. A WPR form is on the NMFS Alaska Region website: <http://www.fakr.noaa.gov/rr/forms/wprmcp.pdf>.

Analysis. If the Council meant to adopt a new requirement for catcher/processor vessels – and grant endorsements based on hauls by catcher/processors rather than the number of weeks of activity – the Council and NMFS would have explained that to the public and to the Secretary in the final rule. The Council and NMFS would likely have conducted further analyses of the effect of such a new requirement on the number and distribution of LLP licenses.

The Council did not do that but explained in the commentary that it intended to eliminate offloading as a requirement for a documented harvest and focus on where the fishing activity occurred. NMFS’s definition of documented harvest for a catcher/processor vessel under review here is consistent with that explanation. I conclude that, in the final LLP rule, the Council intended to define documented harvests for catcher/processors the same way it defined legal landings for catcher/processors.

Third, NMFS’s interpretation furthers the purpose of the four documented harvest requirement in 50 C.F.R. § 679.4(k)(4)(ii)(F). After much debate and specific discussion, the Council imposed distinctly more stringent requirements on a catcher/processor in the mid-size length to receive a Western Gulf endorsement than a catcher vessel of the same length.³⁸ A catcher vessel between 60 to 125 feet receives a Western Gulf endorsement if it makes one documented harvest of groundfish in the Western Gulf any time between January 1, 1992 and June 17, 1995.³⁹ A catcher/processor does not receive a Western Gulf endorsement if it made only one documented harvest in the EQP. It has to make either two documented harvests, one in each calendar year between January 1, 1992 and June 1995, or four documented harvests between January 1, 1995 and June 17, 1995.⁴⁰

The Council adopted more stringent requirements for catcher/processors because

³⁸ The Council discussed extensively the requirements for a Western Gulf endorsement for catcher vessels and catcher/processors. Council Discussion of LLP, June 15 - 17, 1995, at pages 28 - 41, pages 125 - 128. Council Member Linda Behnken probably spoke for the entire Council when she said “[t]his issue has probably been one of the toughest for me all week.” Council Discussion at page 126. The Council had to specifically clarify at its October 1, 1995 meeting that it intended that catcher vessels of 60 to 125 feet receive a Western Gulf endorsement with only one documented harvest but catcher/processors of the same size had to meet the higher requirement of either one documented harvest in two calendar years in the EQP or four documented harvests between January 1 and June 17, 1995. Council Discussion of LLP, October 1, 1995 at 31 - 38. Transcripts of the Council’s LLP Discussion at its meetings on June 15 - 17, 1995 and October 1, 1995 are on the NMFS Alaska Region Website, Administrative Appeals, “Other Documents,” <http://www.fakr.noaa.gov/appeals/npfmcLLP95.pdf> and <http://www.fakr.noaa.gov/appeals/npfmcLLP100195.pdf>.

³⁹ 50 C.F.R. § 679.4(k)(4)(ii)(D).

⁴⁰ 50 C.F.R. § 679.4(k)(4)(ii)(E) & (F).

catcher/processors have greater fishing capacity than catcher vessels of the same length.⁴¹ And the Council had special concerns about a catcher/processor that entered the Western Gulf in the last five and a half months of the endorsement qualification period – namely between January 1, 1995 and June 17, 1995. For late entrants into the Western Gulf, the Council and NMFS required four documented harvests. NMFS explained in commentary to the final rule:

NMFS believes that four documented harvests will be sufficient to show that a person intended to remain in the fishery and that his or her participation was not merely speculative and opportunistic.⁴²

Beagle’s interpretation of the four documented harvest requirement allows a catcher/processor to fish permanently in the Western Gulf when that vessel fished in the Western Gulf in one week in May – in the last month and a half of the endorsement qualification period. That amount of fishing could be merely speculative and opportunistic. That amount of fishing may not be sufficient to show that a person – in 1995 – had made a commitment to the fishery.

NMFS’s interpretation does justice to the Council’s conscious policy choice to require a significant amount of fishing – measured by fishing in four different weeks – by an applicant that now wants to fish permanently with a catcher/processor in the Western Gulf but who only entered the Western Gulf groundfish fishery between January 1, 1995 and June 17, 1995.

Fourth, NMFS defined a documented harvest by consulting the documents that NMFS used to create the official LLP record. The Official LLP record means

the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish or crab fisheries during qualified periods for the groundfish and crab LLP specified at § 679.4(k) Information in the official LLP record includes vessel ownership information, documented harvests

⁴¹ The commentary to the final LLP rule explains: “A vessel in the Western Gulf that qualifies for a catcher/processor vessel designation and that is from 60 ft (18.3 m) to less than 125 ft (37.8 m) LOA [length overall] has the same documented harvesting requirements as do all vessels of similar length in the Central Gulf area and Southeast Outside district *because of its fishing capacity.*” Final Rule, 63 Fed. Reg. 52,642, 52,645 (1998) (emphasis added). In clarifying that the Council meant to impose different requirements in the Western Gulf for catcher/processors than catcher vessels in the mid-size range, Council Member Benton stated it was because “*of concerns regarding the fishing power that catcher/processors have versus catcher vessels.*” NPFMC Discussion of License Limitation Issues, October 1, 1995 at page 34 (emphasis added), available on the NMFS Alaska Region Website, Administrative Appeals, “Other Documents,” <http://www.fakr.noaa.gov/appeals/npfmcLLP100195.pdf>.

⁴² Final Rule, 63 Fed. Reg. 52,642, 52,545 (1998). Council Member Ron Hegge, who moved the adoption of the four landing requirement, states that “it shows the serious participation and not just taking advantage of possibly getting a permit.” NPFMC Discussion of LLP at page 32 (June 15 - 17, 1995), <http://www.fakr.noaa.gov/appeals/mpfmcLLP95.pdf>.

made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving the validity of information submitted in an application that is inconsistent with the official LLP record.⁴³

When NMFS created the official LLP record, it used data from weekly production reports and State of Alaska fish tickets. NMFS explained in commentary to the final LLP rule that adopted the LLP application procedures:

NMFS currently is compiling a database containing information on vessels that participated in the groundfish and crab fisheries during the qualifying periods for LLP licenses. *Sources of information for this database include weekly production reports and observer reports from NMFS and fish tickets*, processor annual reports, and vessel registration information from the State of Alaska. NMFS will create the official LLP record from only complete and verifiable information from the database.⁴⁴

In concluding that the official LLP record did not show that the F/V BEAGLE made the documented harvests necessary for a Western Gulf endorsement, RAM staff consulted a printout of Weekly Production Report [WPR] data from the Sustainable Fisheries Division within NMFS.⁴⁵ The WPR printout organized the vessel's harvest data in the same way that the WPR captured the data: the amount of groundfish that the vessel caught in an entire week, broken down by specific groundfish species and by whether the vessel discarded or kept the fish.

Beagle introduced no evidence, and I have found none, that the official LLP record contained harvest data organized by haul or harvest data from the Daily Cumulative Production Logs.⁴⁶ If

⁴³ 50 C.F.R. § 679.2.

⁴⁴ Final Rule, 64 Fed. Reg. 42,826, 42,826 (1999) (emphasis added).

⁴⁵ The record from RAM has the WPR printout with the notation "TB 1/13/03 rec'd from Mary Furuness." I informed Beagle that "TB" stands for Tracy Buck, Permit Specialist with RAM, and that Mary Furuness is a Resource Management Specialist, with Sustainable Fisheries Division within NMFS, whose duties include generating reports of data collected from WPRs. I gave Beagle the opportunity to comment on the WPR printout. *Order Regarding Additional Documents and Providing Appellant With Opportunity to Comment* (April 17, 2006). Exhibit 1 to the Order is the WPR summary printout.

⁴⁶ The Daily Cumulative Production Logs [DCPL] do not record whether the vessel harvested – caught and retained – groundfish from each haul, when the vessel made more than one haul in a day. On the DCPL, the vessel operator records the estimated round weight catch from *each* haul. But the DCPL aggregates all the groundfish, by species, that the vessel discarded from *all* hauls made on a day. And the DCPL aggregates all the groundfish, by species, that the vessel retained as product from *all* hauls made

a haul was the standard for defining a documented harvest, I would expect to find harvest data organized by haul in the official LLP record.

NMFS determined documented harvests for catcher/processor vessels by consulting Weekly Production Reports, which are documents that NMFS used to create the official LLP record. This supports NMFS's conclusion that a week's harvesting activity, as recorded on a WPR, is a legitimate way to distinguish between catcher/processor vessels that made one, two, three or four documented harvests in the Western Gulf between January 1, 1995 and June 17, 1995.

I wish to address two other points. First, Beagle points to the language in 50 C.F.R. § 679.4(k)(4) allowing "other valid documentation" as support for its position that it can use Daily Cumulative Production Logs to prove documented harvests. That provision states:

A groundfish license will be issued to an eligible applicant that meets the criteria in paragraphs (k)(4)(i) and (k)(4)(ii) of this section. For purposes of the license limitation program, evidence of a documented harvest must be demonstrated by a state catch report, a Federal catch report, or other valid documentation that indicates the amount of license limitation groundfish harvested, the groundfish reporting area in which the license limitation groundfish was harvested, the vessel and gear type used to harvest the license limitation groundfish, and the date of harvesting, landing, or reporting. State catch reports are Alaska, California, Oregon, or Washington fish tickets. Federal catch reports are Weekly Production Reports required under § 679.5.⁴⁷

The background of this provision is that, under the IFQ program, an applicant could only prove a landing of halibut or sablefish through State or Federal catch reports.⁴⁸ This provision expands

on a day. On the DCPL dated May 6, 1995, the "Records for Each Haul or Set" show that the vessel caught 2 tons of groundfish in haul 315, 3 tons in haul 316 and 2 tons in haul 317, for a total of 7 tons. Under "Product Information," the DCPL shows the vessel kept .56 metric tons of species 122, which Flathead sole; .02 metric tons of species 125, which is rex sole; and .02 metric tons of species 143, which is thornyhead. The vessel retained a total of 7/10 of a metric ton of groundfish. It is impossible to tell from the DCPL, dated May 6, 1996, whether the vessel kept and retained groundfish from each haul it made that day and, if so, how much. Beagle's DCPL dated May 6, 1995 is in Exhibit A to Letter from R. Shawn Griggs (July 25, 2003). Product and species codes are at Tables 1 & 2A to 50 C.F.R. § 679.

⁴⁷ 50 C.F.R. § 679.4(k)(4). The proposed rule for this section ended after the first sentence. Proposed Rule, 62 Fed. Reg. 43,866, 43,886 (1997).

⁴⁸ 50 C.F.R. § 679.40(a)(3)(v)(B). The commentary to the IFQ rule states: "Other types of documents that report landings of fish will not be considered evidence of legal landings for purposes of initial allocation of [quota share]." Final Rule, 58 Fed. Reg. 59,375, 39,382 (1993). IFQ, or Individual Fishing Quota Program, is the program of limited access to Pacific halibut and sablefish fisheries in the Exclusive Economic Zone [EEZ] off Alaska.

the types of evidence an LLP applicant can use to try to prove a documented harvest.

But the agency must first decide what an LLP applicant has to prove. NMFS has interpreted the four documented harvest requirement in 50 C.F.R. § 679.4(k)(4)(ii)(F) to mean that an LLP applicant must prove it harvested groundfish in four different weeks. Under the other valid documentation provision, an LLP applicant could offer a Daily Cumulative Production Report to try to prove that a vessel harvested groundfish in a week.⁴⁹ The LLP applicant would not be stopped cold at the door because the document was not a State or Federal catch report. But the other valid documentation provision does not address whether NMFS must credit a vessel with a documented harvest according to days, weeks, hauls or any other criteria. It simply does not speak to the issue.

Second, I conclude that NMFS's interpretation of the four documented harvest requirement in 50 C.F.R. § 679.4(k)(4)(ii)(F) is consistent with the court's decision in *Alaska Trojan Partnership [ATP] v. Gutierrez* for several reasons.⁵⁰ The court in *ATP* found that NMFS's interpretation of a documented harvest was erroneous because "RAM's interpretation requires an offload of crab in order to be considered a harvest of crab."⁵¹ NMFS's interpretation of the four documented harvest requirement in 50 C.F.R. § 679.4(k)(4)(ii)(F) does not require a landing or an offloading.

Further, the court stated in *ATP* that, when the Council analyzed the LLP, it might have defined a landing the way urged by the vessel owner in *ATP*, namely the Council might have credited each line on a fish ticket showing fish caught from different State statistical areas as a separate landing.⁵² Here, the administrative record shows that the Council, in its LLP groundfish analysis, defined one groundfish landing for catcher/processors as every week of landing activity.⁵³ Beagle submits no evidence or argument that the Council used the definition it urges, namely one landing for every haul listed on a Daily Cumulative Production Log.

Finally, the court in *ATP* emphasized that NMFS based the official LLP record for crab on State of Alaska fish tickets, which list harvests separately by State statistical areas, and that NMFS

⁴⁹ This provision requires that "other valid documentation" have four pieces of information: amount of groundfish harvested; groundfish reporting area; vessel and gear type; and the date of harvesting, landing, or reporting. 50 C.F.R. § 679.4(k)(4). I do not imply an opinion on whether one piece of documentation must have all four pieces of information.

⁵⁰ 425 F. 3d 620 (9th Cir. 2005).

⁵¹ 425 F. 3d at 628.

⁵² "The administrative record contains no documents in which the Council defined what it considered to be a landing of crab." 425 F. 3d at 633.

⁵³ See page 9 *supra*.

kept the fish ticket data organized that way in the official LLP record.⁵⁴ As I noted, Beagle submitted no evidence or argument that the official LLP record contains information from the Daily Cumulative Production Logs or the harvests of catcher/processors broken out by haul.

To summarize, I conclude that the number of weeks a vessel harvested groundfish in the Western Gulf is a reasonable way to distinguish between vessels that made one, two, three or four documented harvests and is a reasonable interpretation of language requiring four documented harvests in 50 C.F.R. § 679.4(k)(ii)(F). The language of the LLP regulations is ambiguous. To implement the program, NMFS had the responsibility to adopt a reasonable interpretation of the four documented harvest requirement in 50 C.F.R. § 679.4(k)(ii)(F).

NMFS adopted an interpretation of the regulation that is allowed by the language of the LLP regulations. NMFS adopted the criterion for documented harvests by catcher/processors that the Council used in analyzing the LLP and recommending it to the Secretary. NMFS adopted an interpretation that furthers the purpose of the requirement for four documented harvests in 50 C.F.R. § 679.4(k)(ii)(F). NMFS defined a documented harvest for catcher/processors by consulting the documents that NMFS used to create the official LLP record. I conclude that NMFS's interpretation of the requirement for four documented harvests in 50 C.F.R. § 679.4(k)(4)(ii)(F) is not plainly erroneous or inconsistent with the regulation.

Based on NMFS's interpretation, I find that Beagle did not make four documented harvests of groundfish in the Western Gulf between January 1, 1995 and June 17, 1995. I conclude that Beagle does not qualify for a Western Gulf endorsement on LLG 4360 as a catcher/processor vessel under 50 C.F.R. § 679.4(k)(4)(ii)(F).

3. Does Beagle qualify for a Western Gulf endorsement on LLG 4360 as a catcher vessel under 50 C.F.R. § 679.4(k)(4)(ii)(D)? No.

In the alternative, Beagle argues that it should receive “a Western Gulf catcher-vessel endorsement.”⁵⁵ Beagle correctly notes that it did make one documented harvest in the Western Gulf during the period January 1, 1992 through June 17, 1995. Therefore, Beagle argues that it meets the requirement for a Western Gulf endorsement in 50 C.F.R. § 679.4(k)(4)(ii)(D). Reading section (4)(ii)(D) as a sentence, it states:

A groundfish license will be assigned a Western Gulf area endorsement if at least one documented harvest of any amount of license limitation groundfish was made during the period beginning January 1, 1992, through June 17, 1995 in the Western GOA regulatory area or in waters shoreward of that area from a vessel in

⁵⁴ 425 F. 3d at 624.

⁵⁵ Letter from R. Shawn Griggs (July 25, 2003).

vessel length category “B” **and that meets the requirements for a catcher vessel designation**; . . . [emphasis added]

Beagle’s LLP license, LLG 4360, has a catcher/processor vessel designation. LLG 4360 has two undisputed area endorsements: Central Gulf and Bering Sea. This means that, with LLG 4360, Beagle can operate a catcher/processor vessel in the Central Gulf and Bering Sea. I read Beagle’s argument as seeking an LLP license that would enable it to operate a catcher vessel in the Western Gulf and a catcher/processor vessel in the Central Gulf and Bering Sea. Based on several provisions in the LLP regulation on vessel designation, I conclude that NMFS has no authority to assign an LLP license one vessel designation for one area and a different vessel designation for another area. I therefore conclude that Beagle does not meet the requirements for a catcher vessel designation on its LLP license.

Under the LLP regulations on vessel designation, NMFS may assign an LLP license one, and only one, vessel designation: a catcher/processor or a catcher vessel. Federal regulation 50 C.F.R. § 679.4(k)(3)(ii) provides:

Vessel designations.

(A) Catcher/processor vessel. A license will be assigned *a catcher/processor vessel designation* if:

(1) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (k)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(4)(ii) of this section; . . .

(2) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (k)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(5)(ii) of this section. [emphasis added]

The requirement for the catcher/processor vessel designation is *not* area by area. The requirement is *not* that the vessel processed groundfish in a specific area. If a vessel processed groundfish in *any* area during the period January 1, 1994 through June 17, 1995, or in its most recent year of participation in the endorsement qualification period, the *license* based on that vessel’s fishing history will be assigned a catcher/processor designation. The LLP license holder with a catcher/processor vessel designation can operate a catcher/processor in any area for which the LLP license has an area endorsement.

The vessel designation regulation goes on to provide:

A license will be assigned *a catcher vessel designation* if it does not meet the

criteria in paragraph (k)(3)(ii)(A)(1) or (k)(3)(ii)(A)(2) of this section to be assigned a catcher/processor vessel designation.”⁵⁶

Beagle does meet the criteria paragraph (k)(3)(ii)(A)(1) for a catcher/processor vessel designation on its LLP license. It processed groundfish between January 1, 1994 and June 17, 1995. Therefore it does not meet the criteria for assigning a catcher vessel designation to its LLP license.

The most recent change in the vessel designation provision corroborates the one vessel designation structure of the LLP. The Council approved limited processing by small catcher vessels:

(D). Limited processing by catcher vessels. Up to 1 mt [metric ton] of round weight equivalent of license limitation groundfish or crab species may be processed per day on a vessel less than or equal to 60 ft (18.3 m) LOA [length overall] that is authorized to fish with *an LLP license with a catcher vessel designation*.⁵⁷

After NMFS assigns a vessel designation, a license holder can change the designation once. The LLP regulations provide:

(C) Changing a vessel designation. A person who holds a groundfish license or a crab species license with *a catcher/processor vessel designation* may, upon request to the Regional Administrator, have the license reissued with *a catcher vessel designation*. *The vessel designation change* to a catcher vessel will be permanent, and that license will be valid for only those activities specified in the definition of catcher vessel designation at § 679.2.⁵⁸

This provision strongly supports the conclusion of this Decision. First, it supports the conclusion that an LLP license can have only one vessel designation, which the license holder can change once and change permanently.

Second, if Beagle changed the designation on its LLP license to catcher vessel, it would meet the requirement for a Western Gulf endorsement in 50 C.F.R. § 679.4(k)(4)(ii)(D) because it would “[meet] the requirements for a catcher vessel designation [on its LLP license].” Then Beagle could receive an LLP license that authorized it to operate a catcher vessel in the Western Gulf,

⁵⁶ 50 C.F.R. § 679.4(k)(3)(ii)(B)(emphasis added). Section (A)(1) requires groundfish processing in a specified time period. Section (A)(2) requires crab processing in a specified time period.

⁵⁷ 50 C.F.R. § 679.4(k)(3)(ii)(D)(emphasis added).

⁵⁸ 50 C.F.R. § 679.4(k)(3)(ii)(C)(emphasis added).

Central Gulf and Bering Sea. But Beagle would not be able to operate a catcher/processor vessel in any area. I conclude that the LLP regulation does not give Beagle the option it wants, namely an LLP license to operate a catcher/processor vessel in some areas and a catcher vessel in others.

FINDINGS OF FACT

1. Beagle did not make a documented harvest of license limitation groundfish in each of any two calendar years during the period January 1, 1992 through June 17, 1995.
2. Beagle did not make four documented harvests of license limitation groundfish during the period January 1, 1995 through June 17, 1995.

CONCLUSIONS OF LAW

1. In interpreting the LLP regulations, the intent of the Secretary is the same as the intent of the North Pacific Fishery Management Council and NMFS, since the Secretary did not make any changes in the LLP regulations as transmitted to him by the Council.
2. In determining the intent of the Secretary, it is valid to rely on the regulatory record as developed by the Council and NMFS, because the Secretary did not issue any documents apart from this record.
3. Beagle does not qualify for a Western Gulf endorsement on LLG 4360 as a catcher/processor vessel under 50 C.F.R. § 679.4(k)(4)(ii)(E), which requires one documented harvest of groundfish in each of any two calendar years between January 1, 1992 and June 17, 1995.
4. Beagle does not qualify for a Western Gulf endorsement on LLG 4360 as a catcher/processor vessel under 50 C.F.R. § 679.4(k)(4)(ii)(F), which requires four documented harvests of groundfish between January 1, 1995 and June 17, 1995.
5. Beagle made one documented harvest of groundfish of groundfish between January 1, 1995 and June 17, 1995, which is recorded on the weekly production report, dated May 6, 1995.
6. The requirement of four documented harvests in 50 C.F.R. § 679.4(k)(4)(ii)(F) is ambiguous.
7. The number of weeks a catcher/processor harvested groundfish in the Western Gulf is a reasonable way to distinguish between catcher/processors that made one, two, three or four documented harvests and is a reasonable interpretation of 50 C.F.R. § 679.4(k)(ii)(F).
8. NMFS's interpretation of the requirement of four documented harvests in 50 C.F.R. § 679.4(k)(4)(ii)(F) to mean that a vessel harvested groundfish in four different weeks is not plainly erroneous or inconsistent with the regulation.

9. Beagle does not qualify for a Western Gulf endorsement on LLG 4360 as a catcher vessel under 50 C.F.R. § 679.4(k)(4)(ii)(D).

10. NMFS has no authority to assign an LLP license one vessel designation for one area and a different vessel designation for another area.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect June 19, 2006, unless by that date the Regional Administrator orders review of the Decision.

Beagle Enterprises, L.P., 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, May 30, 2006. 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 Administrative Judge, and must be accompanied by a written statement in support of the motion.

Mary Alice McKeen
Administrative Judge