

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
)
PAUL S. WARD,)
Appellant)
)
)
)
)
)
)

Appeal No. 01-0014
DECISION
March 3, 2003

STATEMENT OF THE CASE

Paul S. Ward appeals an Initial Administrative Determination [IAD] by the Restricted Access Management Program [RAM], dated July 5, 2001, issued under the North Pacific Groundfish and Crab License Limitation Program [LLP].¹ The IAD denied Mr. Ward an LLP groundfish license based on the fishing history of the F/V LADY GRACE, ADFG # 16866.

To receive a license based on the fishing history of the F/V LADY GRACE, Mr. Ward had to own the F/V LADY GRACE on June 17, 1995 or must now own the LLP-qualifying fishing history of the F/V LADY GRACE according to a contract that meets the requirements of federal regulation 50 C.F.R. § 679.2.² Mr. Ward did not own the F/V LADY GRACE on June 17, 1995. According to the official LLP record, L.G. Fisheries did. Mr. Ward claims that he owns the fishing history of the F/V LADY GRACE through a contract with L.G. Fisheries.

The IAD denied Mr. Ward's application. RAM found that Mr. Ward had only purchased the fishing history of the F/V LADY GRACE that was necessary for a moratorium qualification and permit under the Vessel Moratorium Program for Groundfish and Crab, the predecessor program to the LLP. Mr. Ward states that he purchased all the groundfish history of the F/V LADY GRACE, including the LLP-qualifying history of the vessel.

Mr. Ward also appeals RAM's determination that, if Mr. Ward does receive an LLP groundfish license, it should have a non-trawl gear designation.³ Mr. Ward believes he should receive a trawl gear designation.

The record has sufficient information for me to decide Mr. Ward's appeal, as required by 50 C.F.R. § 679.43(g)(2). I therefore close the record and issue this decision.

¹ The LLP is located in 50 C.F.R. § 679: 50 C.F.R. § 679.1(j) (purpose and scope); 50 C.F.R. § 679.2 (definitions); 50 C.F.R. § 679.4(a)(6) (definition of harvesting privilege); 50 C.F.R. § 679.4(k)(requirements for licenses); 50 C.F.R. § 679.7 (prohibitions); 50 C.F.R. § 679.43 (appeals). The LLP regulations are on the NMFS Alaska Region website: <http://www.fakr.noaa.gov/regs/summary.htm>

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

³ Letter from Philip J. Smith, RAM Program Administrator, to Paul S. Ward, October 24, 2001.

SUMMARY

Mr. Ward is an eligible applicant for an LLP license based on ownership of the fishing history of the F/V LADY GRACE and therefore meets the second definition of eligible applicant in 50 C.F.R. § 679.2. Mr. Ward owns the fishing history of the F/V LADY GRACE according to the express terms of a written contract that clearly and unambiguously transferred the LLP-qualifying history of the F/V LADY GRACE to Mr. Ward.

Federal regulation 50 C.F.R. § 679.4(k)(3)(iv)(E) provides that “[a]n applicant may request a change of gear designation based on gear used from the vessel during the period beginning June 18, 1995 to February 7, 1998.” It does not matter whether the vessel on which the gear was used was an original qualifying vessel under the Vessel Moratorium Program or a vessel that obtained a moratorium qualification by transfer from an original qualifying vessel. Since Mr. Ward made five harvests of groundfish with trawl gear between June 18, 1995 and February 7, 1998, he is entitled to have a trawl gear designation on his LLP groundfish license.

ISSUES

1. Is Mr. Ward an eligible applicant for an LLP license based on ownership of the fishing history of the F/V LADY GRACE?
2. Is Mr. Ward entitled to have his LLP groundfish license designated for trawl gear?

ANALYSIS

1. Is Mr. Ward an eligible applicant for an LLP license based on ownership of the fishing history of the F/V LADY GRACE? 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; . . .⁴

Mr. Ward did not own the F/V LADY GRACE on June 17, 1995. Mr. Ward therefore does not satisfy the first definition of eligible applicant. The question is whether Mr. Ward satisfies the second definition of eligible applicant.

To prove that he does, Mr. Ward submitted to RAM a contract entitled Moratorium Qualification Offer/Sales Agreement which Mary Magnuson, President of L.G. Fisheries signed on December 30, 1997, and Paul Ward signed on January 7, 1998. I will refer to this as the contract or the parties' contract. Mr. Ward also submitted to RAM a Bill of Sale, signed by Mary Magnuson, dated January 3, 1998. On appeal, Mr. Ward submitted a lengthy affidavit by Mary Magnuson, dated November 2, 2001, which described the circumstances of the parties' contract, and an affidavit of Paul Ward, dated November 2, 2001, which states that he agrees with Ms. Magnuson's affidavit and that it "comports with my memory and understanding of the facts of this transaction."

An initial word about terminology may be helpful. A vessel's **moratorium qualification** was the "transferable prerequisite for issuance of a moratorium permit."⁵ Another way of saying that is that a vessel's moratorium qualification was the fishing history necessary for RAM to issue a moratorium permit. Moratorium permits were issued under the Vessel Moratorium Program for Groundfish and Crab, the predecessor program to the LLP. The Moratorium Program was originally set to expire December 31, 1998 but was extended until December 31, 1999 because it took longer than expected to establish.⁶

When RAM determined that a vessel had moratorium qualification, it issued the vessel owner a Certificate of Moratorium Qualification. L.G. Fisheries owned Certificate of Moratorium Qualification # 5179, which was the certificate based on the fishing history of the F/V LADY GRACE. Therefore, it is a little confusing because a vessel's "moratorium qualification" can refer both to the fishing history of the vessel that allowed RAM to issue a moratorium permit and to the Certificate of Moratorium Qualification that RAM issued as tangible evidence that a person owned that fishing history.

By contrast, a vessel's **LLP qualification** is relatively straightforward. It is the fishing history necessary for RAM to issue an LLP license. Under the LLP, there is no separate certificate of LLP Qualification. If a contract conveyed **all of a vessel's groundfish history**, the contract would convey all the groundfish landings or harvests by a vessel that occurred prior to the date

⁴ 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. Ward claims neither.

⁵ Final rule, 60 Fed. Reg. 40,763, 40,773 (1995), *formerly* 50 C.F.R. § 679.2.

⁶ For an explanation of the purpose and timing of the Moratorium Program, see *Fierce Packer*, Appeal No. 00-0004 at 2 - 4 (December 18, 2000).

of the contract. The contract in this appeal was signed January 7, 1998. The latest date for a qualifying period for a moratorium permit or an LLP license is June 17, 1995.⁷ Therefore, if this contract transferred all the groundfish history of the F/V LADY, the transfer would include both the vessel's moratorium qualification and LLP qualification.

We have two competing interpretations of the parties' contract. RAM concluded that Mr. Ward had only proved that L.G. Fisheries transferred to him the moratorium qualification of the F/V LADY GRACE – the fishing history necessary for NMFS to issue a moratorium permit. I refer to this as the moratorium interpretation of the contract. Mr. Ward's interpretation is that the parties and the contract transferred *all* the groundfish history of the F/V LADY GRACE. This included the vessel's moratorium qualification and the vessel's LLP qualification.

RAM's conclusion is understandable. The title of the contract is "Moratorium Qualification Offer/Sales Agreement." Paragraph 1 of the contract states it is "for the lease/sale of the Alaska Moratorium Qualification # 5179A, hereinafter referred to as PERMIT." Paragraph 2 states that the Seller, which is Mary Magnuson, President of L.G. Fisheries, agrees to "lease said PERMIT for the calendar year 1998 for \$5,000." The Bill of Sale states that Mary Magnuson does "sell and convey the Alaska Moratorium Qualification # 5179A" to Paul Ward of Dallas, Oregon."

It is unquestionably true that the contract conveyed to Mr. Ward the use of Moratorium Qualification 5179A for the year 1998 and Mr. Ward paid \$5,000 for that. But that is not the only thing the contract conveyed to Mr. Ward and that was not the only amount he agreed to pay.

I find that Mr. Ward agreed to pay an *additional* \$45,000 for all the groundfish history of the F/V LADY GRACE, contingent upon the L.G. Fisheries proving that the groundfish history of the F/V LADY GRACE would permit Mr. Ward to fish groundfish in Alaska *after* 1998 and *after* the Moratorium Program ended. I find that L.G. Fisheries met that condition. Therefore, I find that the contract conveyed *all* of the F/V LADY GRACE's groundfish history to Mr. Ward.

To interpret the parties' contract, I analyze the language of the contract and extrinsic evidence regarding the expectations or intentions of the contracting parties.⁸ I look first to the language of the contract. The contract in paragraph three obligates Mr. Ward to pay an *additional* \$45,000 upon proof of a groundfish landing between January 1, 1992 and December 31, 1995:

Should SELLER produce proof of a groundfish landing in the State of Alaska, after January 1, 1992 and prior to January 1, 1996, this contract shall convert to a sale contract. The full purchase price of the PERMIT is \$50,000, the balance of \$45,000 is payable to the Trust account of Pacific Marine Brokers Inc., within 10 days of notification of a

⁷ 50 C.F.R. § 679.4(k)(4).

⁸ *Laborers Health and Welfare Trust Fund for Northern California v. Kaurman & Broad of Northern California*, 707 F. 2d 412, 418 (9th Cir. 1983); *Wright v. Vickaryous*, 598 P.2d 490, 497 (Alaska 1979); A. Corbin, CORBIN ON CONTRACTS (rev. ed. J. Perillo)(1993) § 1.1, § 24.7.

confirmed groundfish landing between 1-1-92 and 12-31-95.

The parties modified this provision to require payment of the \$45,000 upon proof of a groundfish landing between January 1, 1992 to June 17, 1995, when the parties learned that the LLP endorsement qualification period was January 1, 1992 to June 17, 1995.⁹ The contract in paragraph four provides:

Seller intends to transfer **all groundfish rights** associated with the F/V Lady Grace, both current and future assigns. [emphasis added]

The moratorium interpretation of the contract does not adequately explain paragraphs three and four of the contract. It does not explain the structure of the contract and why the payment was divided into two payments of \$5,000 and \$45,000. It does not explain why the contract made payment of the additional \$45,000 dependent upon proof of a groundfish landing either between January 1, 1992 and December 31, 1995 or between January 1, 1992 and June 17, 1995. Neither period corresponds to any period under the Moratorium Program. The latest date of relevance for any groundfish landing in the Moratorium Program was December 11, 1994, whereas the January 1, 1992 to June 17, 1995 period is the endorsement qualification period for an LLP groundfish license.¹⁰ The moratorium interpretation of the contract does not reasonably explain the provision that L.G. Fisheries “intends to transfer all groundfish rights associated with the F/V LADY GRACE.”

Mr. Ward’s interpretation explains the language of paragraphs three and four of the contract. Paragraph three conditioned Mr. Ward’s payment of \$45,000 upon proof that the fishing history of the F/V LADY GRACE would enable Mr. Ward to participate in the successor to the Moratorium Program. The concept was simple: the parties had to make sure that L.G. Fisheries had the thing that Mr. Ward wanted to buy – the qualification for an LLP license – before Mr. Ward would pay L.G. Fisheries \$45,000. Ms. Magnuson explains:

Mr. Ward and I wanted to be sure that we transferred all the rights with the Lady Grace, and wanted to be sure that the vessel had fishing rights associated with the qualifying years. I agreed to transfer the fishing history the rights rights [sic] and moratorium to Mr. Ward and make the final transfer to Mr. Ward contingent on receiving verification from Mr. Abbott [a prior owner] that the boat had made the necessary landings during the qualifying years.¹¹

⁹ Affidavit of Mary Magnuson, November 2, 2001 at ¶ 21. I relied on this affidavit for facts that were not in the parties’ contract, the Bill of Sale or RAM’s file. I explain at page 6 *infra* why I found this affidavit credible.

¹⁰ 50 C.F.R. § 679.4(k)(iv)(ii). Some endorsements require two harvests during this period and some endorsements have an alternative way of meeting the endorsement qualification period: four harvests between January 1, 1995 and June 17, 1995.

¹¹ Affidavit of Mary Magnuson, November 2, 2001 at ¶ 14.

Mr. Ward's interpretation of the contract is completely consistent with the express terms of paragraph four, namely, that L.G. Fisheries "intends to transfer all groundfish rights associated with the F/V LADY GRACE" to Mr. Ward.

Mr. Ward's interpretation is consistent with the parties' actions after the contract. After Ms. Magnuson signed the contract, the parties determined that the F/V LADY GRACE had LLP qualification. Ms. Magnuson executed a bill of sale that recited that the contingencies in the contract had been met. Mr. Ward paid \$45,000 to L.G. Fisheries. L.G. Fisheries did not apply for this LLP license because it had transferred the vessel's LLP qualification to Mr. Ward. Ms. Magnuson explained that the transaction "left the Lady Grace with no fishing history whatsoever."¹²

Finally, Mr. Ward offers a more reasonable interpretation of the expectations and intent of the contracting parties. Paul Ward contacted L.G. Fisheries in late 1997 because he wanted to participate in the Alaska groundfish fishery with his boat, the F/V GRUMPY J.¹³ To fish for groundfish in 1998, a vessel needed moratorium qualification. Paul Ward agreed to pay \$5,000 for the use of the F/V LADY GRACE's moratorium qualification for the year 1998. But Paul Ward wanted to fish for groundfish in Alaska not just for one year; he wanted to fish *after* 1998 as well. The contract makes the payment of \$45,000 conditional upon the parties making sure that they could accomplish their goal, namely sale of a fishing history that would enable Mr. Ward to participate in the groundfish fishery during and after 1998.

I note that RAM did not have the benefit of the parties' affidavits when it issued the IAD. I find Ms. Magnuson's affidavit credible. It is internally consistent. It explains convincingly why the contract payment is divided into payments of \$5,000 and \$45,000 and why Mr. Ward only had to pay the additional \$45,000 if L.G. Fisheries showed a groundfish landing between certain dates. Ms. Magnuson's affidavit is corroborated by Mr. Ward, who states that he agrees with Ms. Magnuson's affidavit and that "the information she has set forth in her affidavit comports with my memory and understanding of the facts of this transaction."¹⁴

It is significant that the parties agree on the terms and effect of their contract. The LLP regulatory history discusses the definition of eligible applicant in 50 C.F.R. § 679.2. Where eligibility is based on a written contract, NMFS explained that it "will recognize written contracts to the extent practicable; however, in the event of a dispute concerning the disposition of the fishing history by written contract, NMFS will not issue a license until the dispute is resolved by the parties involved."¹⁵ The parties have resolved any dispute over the disposition of this fishing history.

¹² *Id.* at ¶ 19.

¹³ Affidavit of Mary Magnuson, November 2, 2001 at ¶ 10.

¹⁴ Affidavit of Paul Ward, November 2, 2001.

¹⁵ Final rule, 63 Fed. Reg. 51,642, 51,645 (Oct. 1, 1998).

Since I have found that the L.G. Fisheries sold to Paul Ward the LLP qualification of F/V LADY GRACE to Paul Ward according to the express terms of a clear and unambiguous contract, I conclude that Paul Ward is the eligible applicant for an LLP license based on the fishing history of the F/V LADY GRACE.

2. Is Mr. Ward entitled to have his LLP groundfish license designated for trawl gear? Yes.

After the initial adoption of the LLP, NMFS adopted regulations that required gear designation on LLP groundfish licenses.¹⁶ LLP groundfish licenses were designated as “trawl,” or “non-trawl,” or “trawl/non-trawl,” depending on the type of gear the qualifying vessel used between January 1, 1988 to June 17, 1995, the qualifying periods for an LLP license.¹⁷ If the vessel used trawl gear during this time period, the LLP license would have a trawl gear designation; if non-trawl, a non-trawl designation; and if both, a trawl/non-trawl designation. The F/V LADY GRACE harvested groundfish with non-trawl gear during this time period.

But the gear designation regulation provided a method where an applicant could change the gear designation from the gear used during January 1, 1988 to June 17, 1995:

An applicant may request a change of gear designation **based on gear used from the vessel during the period beginning June 18, 1995 to February 7, 1998**. Such a change would be permanent and may only be used for a change from trawl to non-trawl or from non-trawl to trawl. [emphasis added] [50 C.F.R. § 679.4(k)(3)(iv)(E)]¹⁸

To harvest groundfish during this time period – June 18, 1995 and February 7, 1998 – a vessel had to have moratorium qualification and a moratorium permit. A vessel had moratorium qualification either because it was an original qualifying vessel – the vessel itself made the landings required for a permit – or because it received moratorium qualification by transfer from an original qualifying vessel.¹⁹

¹⁶ Final rule, 66 Fed. Reg. 48,813 (Sept. 24, 2001), *codified at* 50 C.F.R. § 679.4(k)(3)(iv).

¹⁷ 50 C.F.R. § 679.4(k)(4)(i)(ii). That time period – January 1, 1988 to June 17, 1995 – was the combined general qualification period and endorsement qualification period for an LLP groundfish license

¹⁸ The gear designation regulation provides a second way an applicant can obtain a change in gear designation: if the applicant made a significant financial investment in converting a vessel or purchasing gear before February 7, 1998 and made a documented harvest with that gear by December 31, 1998. 50 C.F.R. § 679.4(k)(3)(iv)(E)(2). Mr. Ward states that he meets this requirement, too, but before arguing and submitting evidence on it, he asked me to decide whether he satisfies the first way to obtain a change in gear designation.

¹⁹ 61 Fed. Reg. 31,228, 31,238 (June 19, 1996), *formerly* 50 C.F.R. § 679.4(c)(7); *Fierce Packer*, Appeal No. 00-0004 at 2 (December 18, 2000). Technically, it was the moratorium qualification that was transferable, not the moratorium permit. But the owner of a moratorium qualification could obtain a

Paul Ward obtained a moratorium qualification by transfer from L.G. Fisheries in January 1998, based on the parties' contract. NMFS approved the transfer of Moratorium Qualification # 5171 to Mr. Ward in January 1998 and issued a certificate of moratorium qualification and a moratorium permit to him. Mr. Ward used that moratorium permit to make five documented groundfish harvests with trawl gear from the F/V GRUMPY J between January 23, 1998 and February 7, 1988.

Mr. Ward therefore made five harvests within the time period June 18, 1995 to February 7, 1998 and sought a trawl designation on his LLP groundfish license based on these harvests. RAM denied Mr. Ward's request because the F/ GRUMPY J, not the F/V LADY GRACE, made those harvests. RAM would have granted Mr. Ward's request if he had made the harvests from the F/V LADY GRACE, which was an original qualifying vessel under the Moratorium Program.

The legal question is the correct interpretation of "the vessel" in 50 C.F.R. § 679.4(k)(3)(iv)(E): "An applicant may request a change of gear designation based on gear used from **the vessel** during the period beginning June 18, 1995 to February 7, 1998." RAM argues that "the vessel" must be an original qualifying vessel under the Moratorium Program. Mr. Ward argues that "the vessel" means any vessel using gear that made a documented groundfish harvest between June 18, 1995 and February 7, 1998, whether the vessel was an original qualifying vessel under the Moratorium Program or obtained a moratorium permit by transfer from an original qualifying vessel.

I conclude that "the vessel" refers to any vessel that harvested groundfish between June 18, 1995 and February 7, 1998, irrespective of whether the vessel had a moratorium qualification because it was an original qualifying vessel or because it obtained a moratorium qualification by transfer from an original qualifying vessel. The relevant fact is what gear the vessel used – trawl gear, non-trawl gear or both – not the route by which the vessel obtained moratorium qualification. Based on the regulations of either the License Limitation Program or the Moratorium Program, I find no basis to conclude that the owner of a moratorium qualification harvests between June 18, 1995 and February 7, 1998 to change gear designation but the owner of a moratorium qualification obtained by transfer does not have that right.

I start with the language of the LLP regulation itself. The regulation permitting an applicant to change gear designation – 50 C.F.R. § 679.4(k)(3)(iv)(E) – simply requires that the gear had to be used by "the vessel." It does not explicitly require that the gear had to be used by a vessel that had moratorium qualification because of its own harvests. By contrast, the part of the regulation that assigns a gear designation based on harvests between January 1, 1988 to June 17, 1995 requires NMFS to look at gear used "from the qualifying vessel."²⁰

NMFS's explanation of the regulation in the Federal Register states:

moratorium permit.

²⁰ 50 C.F.R. § 679.4(k)(3)(iv)(B), (C), (D).

[A] person can exercise a one-time option to switch gear designations if that person used a different gear type between June 18, 1995, and February 7, 1998, than was used previously. For example, a person used only trawl gear before June 17, 1995, but in 1997 used pot gear to catch Pacific cod. The use of this non-trawl gear type in 1997 would allow the person to exercise a one-time option to change the gear designation from trawl gear to non-trawl gear.²¹

The regulation requires NMFS to grant the requested gear designation based on what type of gear the applicant's vessel used. Neither the regulation itself, nor NMFS's explanation, suggests that NMFS can deny a gear designation request because the applicant obtained a moratorium qualification by transfer from an original qualifying vessel and grant a request because an applicant obtained a moratorium qualification by ownership of an original qualifying vessel. Both applicants expended energy and capital to outfit their vessels with new gear. In fact, the applicant who obtained the moratorium qualification by transfer typically spent more money because that applicant would usually have bought the moratorium qualification, in addition to the new gear.

The Moratorium Program regulations did not suggest the distinction RAM is drawing. The regulations simply list the different ways a vessel can have moratorium qualification. One way is that the vessel received a moratorium qualification through a transfer approved by NMFS.²² NMFS approved the transfer of the moratorium qualification to Mr. Ward without qualification.

Further, the essence of a moratorium qualification was that it was "transferable."²³ An owner of a moratorium qualification had a right to transfer it, if the owner submitted specified information and the new vessel was within the length allowed on the moratorium qualification.²⁴ If the owner met those requirements, NMFS approved the transfer. NMFS did not evaluate the wisdom of the transfers. A rule that an applicant whose vessel harvested groundfish with a moratorium qualification obtained by transfer cannot obtain a change in gear designation is in tension with the free transferability of moratorium qualifications. Such a rule relegates moratorium qualifications obtained by transfer to second-class status, whereas the Moratorium Program regulations made no such distinction.

FINDINGS OF FACT

1. According to the official LLP record, L.G. Fisheries, Inc., was the owner of record of the

²¹ Final rule, 66 Fed. Reg. 48,813, 48,815 (2001)(background section).

²² Final rule, 61 Fed. Reg. 31,228, 31,238 (1996), *formerly* 50 C.F.R. § 679.4(c)(8)(iv).

²³ As noted, the regulatory definition of a moratorium qualification was the "transferable prerequisite for issuance of a moratorium permit." 60 Fed. Reg. 40,763, 40,773 (1995), *formerly* 50 C.F.R. § 679.2.

²⁴ 60 Fed. Reg. 40,763, 40,774 (1995), *formerly* 50 C.F.R. § 679.4(c)(8).

F/V LADY GRACE on June 17, 1995 and was eligible to apply for an LLP license that resulted from the fishing history of the F/V LADY GRACE.

2. L.G. Fisheries, Inc., through Mary Magnuson, President of L.G. Fisheries, Inc., and Paul Ward entered into a contract entitled, Moratorium Qualification Offer/Sales Agreement which Mary Magnuson signed on December 30, 1997 and Paul Ward signed on January 7, 1998.
3. Under the express terms of the contract, Paul Ward agreed to pay \$5,000 for the use of the F/V LADY GRACE's fishing history that would enable him to receive a moratorium permit for the year 1998.
4. Under the express terms of the contract, Mr. Ward agreed to pay an additional \$45,000, contingent upon the parties' determining that the fishing history of the F/V LADY GRACE would enable Mr. Ward to participate in the program that would replace the Moratorium Program.
5. The parties determined that the fishing history of the F/V LADY GRACE supported issuance of an LLP groundfish license.
6. Mr. Ward paid L.G. Fisheries \$45,000 to obtain the qualifications, or fishing history, for an LLP license.
7. L.G. Fisheries transferred to Mr. Ward all the groundfish history of the F/V LADY GRACE.
8. L.G. Fisheries transferred to Mr. Ward the qualifications for an LLP license, which means the fishing history of the F/V LADY GRACE which supports issuance of an LLP license.
9. The express terms of the contract clearly and unambiguously transfer the qualifications for an LLP license based on the fishing history of the F/V LADY GRACE from L.G. Fisheries to Paul Ward.
10. NMFS transferred the moratorium qualification based on the fishing history of the F/V LADY GRACE to Paul Ward in January 1998 and issued Mr. Ward a moratorium permit.
11. Mr. Ward used the moratorium qualification and permit based on the fishing history of the F/V LADY GRACE to make five documented harvests of license limitation groundfish from the F/V GRUMPY J between January 23, 1998 and February 7, 1998 with trawl gear.

CONCLUSIONS OF LAW

1. Paul Ward owns the LLP qualification of the F/V LADY GRACE.

2. Paul Ward is the eligible applicant for an LLP license based on ownership of the fishing history of the F/V LADY GRACE.
3. Under 50 C.F.R. § 679.4(k)(3)(iv)(E)(1), an applicant may obtain a change of gear designation from non-trawl to trawl on an LLP groundfish license based on whether the vessel used trawl gear to harvest groundfish between June 18, 1995 to February 7, 1998.
4. Under 50 C.F.R. § 679.4(k)(3)(iv)(E)(1), NMFS may not deny an applicant's request for a change of gear designation based on whether the vessel had a moratorium qualification and permit because it was an original qualifying vessel under the Moratorium Program or because it obtained a moratorium qualification by transfer from an original qualifying vessel.
5. Paul Ward is entitled to have his LLP groundfish license designated for trawl gear

DISPOSITION

The IAD denying the Appellant's application is VACATED. The Restricted Access Management Program is ORDERED to grant Paul Ward the LLP license that is based on the fishing history of the F/V LADY GRACE. This Decision takes effect on April 2, 2003, 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 at this Office not later than 4:30 p.m. Alaska Time, on the tenth day after the date of this Decision, March 13, 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 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.

Mary Alice McKeen
Appeals Officer