

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 01-0017
)	
DAVID O. OSTERBACK,)	DECISION
Appellant)	
_____)	February 10, 2003

STATEMENT OF THE CASE

The Restricted Access Management (RAM) Program issued an Initial Administrative Determination (IAD) that denied David Osterback's application for a groundfish license with an endorsement for Western Gulf groundfish under the North Pacific Groundfish and Crab License Limitation Program (LLP), based on the fishing history of the catcher vessel F/V BALBOA. The IAD also denied Mr. Osterback's claim in his application regarding the length overall (LOA) of the vessel. Mr. Osterback has filed a timely appeal of the IAD. He is authorized to file an appeal because the IAD directly and adversely affects his interests. [50 C.F.R. § 679.43(b)]

The Office of Administrative Appeals issued a request for evidence that asked Mr. Osterback to produce (1) a state fish ticket or federal catch report (or any other credible document) that shows the F/V BALBOA made at least one harvest of groundfish in the Western Gulf of Alaska between January 1, 1992, and June 17, 1995; and (2) a credible document that shows the LOA of the F/V BALBOA on June 24, 1992. Mr. Osterback was given thirty (30) days, until August 1, 2002, to produce the requested evidence. Mr. Osterback has still not responded. The record on appeal is now closed. An oral hearing is not necessary in this case because the record contains sufficient information on which to reach a final decision. [50 C.F.R. § 679.43(k)]

ISSUES

1. Does Mr. Osterback qualify for an LLP groundfish license, endorsed for the Western Gulf of Alaska groundfish fishery, based on the fishing history of the F/V BALBOA?
2. What was the length overall of the F/V BALBOA on June 24, 1992; June 17, 1995; and currently (at the time of application)?

ANALYSIS

1. Does Mr. Osterback qualify for an LLP groundfish license, endorsed for the Western Gulf of Alaska groundfish fishery, based on the fishing history of the F/V BALBOA?

To qualify for an LLP groundfish license, with an endorsement for the Western Gulf of Alaska groundfish fishery, Mr. Osterback must establish that the F/V BALBOA made (1) at least one documented harvest of LLP groundfish in the Gulf of Alaska during the general qualifying

period (GQP) (January 1, 1988 - June 27, 1992);¹ and (2) at least one documented harvest of LLP groundfish in the Western Gulf of Alaska endorsement area during the endorsement qualifying period (EQP) (January 1, 1995 - June 17, 1995).²

The NMFS official LLP record does not show that the F/V BALBOA made any documented harvests of LLP groundfish in the Western Gulf of Alaska between January 1, 1992, and June 17, 1995. The record on appeal contains no evidence to the contrary. Therefore, I find that the vessel did not make a documented harvest of LLP groundfish in the Western Gulf of Alaska during that time period. As a result, I conclude that Mr. Osterback does not qualify for an LLP groundfish license endorsed for the Western Gulf of Alaska groundfish fishery, based on the fishing history of the F/V BALBOA.

2. What was the length overall of the F/V BALBOA on June 24, 1992; June 17, 1995; and currently (at the time of application)?

The LLP application asks applicants to state the LOA of their vessels on three dates: June 24, 1992; June 17, 1995; and currently (at the time of application). These dates are significant because they are used in determining the maximum size (maximum length overall - MLOA)³ of vessels that can be used with an LLP license derived from the fishing history of the qualifying vessel. In this case, of course, I have already decided that Mr. Osterback does not qualify for an LLP license. Nonetheless, I will address the second issue decided in the IAD, namely, the LOA of the F/V BALBOA.⁴

The official LLP record shows that the LOA of the F/V BALBOA is currently 38 feet, and was 38 feet on June 24, 1992, and on June 17, 1995. Evidence of a vessel's LOA may consist of a past marine survey, an original builder's certificate, and admeasurement documents submitted to the U.S. Coast Guard National Documentation Center, a certificate of registration that states the vessel's length, or other credible evidence.⁵ Mr. Osterback has submitted no such evidence of his vessel's LOA. In fact, he has submitted no evidence at all. The record on appeal contains no evidence to dispute the vessel length information in the official LLP record. Therefore, I find that the LOA of the vessel is and was 38 feet on the dates in question.

FINDINGS OF FACT

¹50 C.F.R. § 679.4(k)(4)(i)(B).

²50 C.F.R. § 679.4(k)(4)(ii)(G).

³See 50 C.F.R. § 679.2. for definitions of "LOA" and "MLOA".

⁴50 C.F.R. § 679.4(k)(3).

⁵63 Fed. Reg. 52,644-52,645 (October 1, 1998).

1. The F/V BALBOA did not make a documented harvest of LLP groundfish in the Western Gulf of Alaska between January 1, 1992, and June 17, 1995.
2. The LOA of the F/V BALBOA is currently 38 feet, and was 38 feet on June 24, 1992, and on June 17, 1995.

CONCLUSION OF LAW

Mr. Osterback does not qualify for an LLP groundfish license, endorsed for the Western Gulf of Alaska groundfish fishery, based on the fishing history of the F/V BALBOA.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect March 12, 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 by this Office not later than 4:30 p.m., Alaska time, on the tenth day after this Decision, February 20, 2003. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement in support of the motion.

Randall J. Moen
Appeals Officer