

ISSUES

1. Does Mr. Kingsley qualify for an LLP groundfish license, based on the fishing history of the F/V DRU-DROP?
2. Does Mr. Kingsley qualify for an LLP crab license, based on the fishing history of the F/V DRU-DROP?

SUMMARY

The IAD is affirmed. Mr. Kingsley does not qualify for an LLP groundfish or crab license, based on the fishing history of the F/V DRU-DROP. According to the official LLP record, the F/V DRU-DROP did not make the required harvests in the general qualification period for a groundfish license with a Gulf of Alaska endorsement. [50 C.F.R. § 679.4(k)(4)(i)(B)] According to the official LLP record, the F/V DRU-DROP did not make the harvests in the general qualification period and the endorsement qualification period which are required for a crab license with any endorsement. [50 C.F.R. § 679.4(k)(5)] Mr. Kingsley did not show that the official LLP record was incorrect. He did not show that the F/V DRU-DROP made the harvests necessary for an LLP groundfish or crab license.

ANALYSIS

To qualify for an LLP groundfish or crab license based on the fishing history of the F/V DRU-DROP, for each license, Mr. Kingsley must show that the F/V DRU-DROP made documented harvests that meet the requirements of a general qualification period [GQP] and an endorsement qualification period [EQP].⁴ To count toward an LLP license, a harvest must be a documented harvest.⁵ When I refer to a harvest in this Decision, I mean a documented harvest.

To count towards an LLP license, a harvest must generally be of “license limitation groundfish” or of “crab species.” License limitation groundfish are

target species and the “other species” category, specified annually pursuant to [50 C.F.R.] § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program are not considered license limitation groundfish. [50 C.F.R. § 679.2]

The annual specification in 50 C.F.R. § 679.20(a)(2) is the process whereby NMFS sets the Total Allowable Catch [TAC] for groundfish harvested in the Gulf of Alaska and the Bering Sea

⁴ 50 C.F.R. §679.4(k)(4)(groundfish licenses); 50 C.F.R. §679.4(k)(4)(crab licenses).

⁵ A documented harvest means “a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting.” 50 C.F.R. § 679.2.

and Aleutian Islands [BSAI].⁶

“Crab species” means king and Tanner crab harvested in the BSAI. [50 C.F.R. § 679.2] I use the term “LLP crab” to mean crab species.

To implement the LLP, NMFS was charged with constructing an official LLP record, which is a database containing information on vessel ownership, vessel characteristics and harvests by vessels during the qualification periods for licenses. [50 C.F.R. § 679.2] The applicant who claims the official LLP record is incorrect has the burden of proving that the applicant’s claims, rather than the official LLP record, are correct. [50 C.F.R. § 679.2, 50 C.F.R. § 679.4(k)(6)(v)]

According to the official LLP record, the F/V DRU-DROP made one harvest on May 28, 1994 in the Central Gulf with hook-and-line gear, consisting of Pacific cod, sharks, arrowtooth flounder and sablefish. Pacific cod, sharks, skates and arrowtooth flounder are license limitation groundfish, because the TAC for these species is specified annually pursuant to 50 C.F.R. § 679.20(a)(2).⁷ Sablefish caught with hook-and-line gear are managed under the IFQ program and therefore are not license limitation groundfish.⁸ According to the official LLP record, the F/V DRU-DROP made no harvests of any LLP crab from 1988 to 1999.

1. Does Mr. Kingsley qualify for an LLP license with a Central Gulf endorsement, based on the fishing history of the F/V DRU-DROP?

To meet the harvest requirement for an LLP license with a Central Gulf endorsement, Mr. Kingsley must show the F/V DRU-DROP meets the general qualification period requirement in one of three ways. The regulatory requirement is in bold, followed by an analysis of whether the F/V DRU-DROP meets the requirement.

[1] The vessel made one harvest of license limitation in the Gulf of Alaska between January 1, 1988 and June 17, 1992 [50 C.F.R. § 679.4(k)(4)(i)(B)(1)].

This is the basic general qualification period. The F/V DRU-DROP’s license limitation groundfish harvest on May 28, 1994 does not fall between January 1, 1988 and June 17, 1992 and so does not meet this requirement. The regulation extends the general qualification period in two situations, described in the next two sections.

[2] The vessel made one harvest of license limitation groundfish harvest in the Gulf

⁶ The TAC for groundfish in the Gulf of Alaska for 2002 is on the NMFS website at <http://www.fakr.noaa.gov/sustainablefisheries/specs02/goatable19.pdf>

⁷ The TAC for groundfish in the Gulf of Alaska for 2002 lists these species.

⁸ IFQ sablefish is sablefish harvested with fixed gear. 50 C.F.R. § 679.2. Fixed gear includes hook-and-line gear. 50 C.F.R. § 679.2 (definition of fixed gear under authorized fishing gear).

of Alaska between January 1, 1988 and December 31, 1994, if the harvest was with pot or jig gear from a vessel less than 60 feet. [50 C.F.R. § 679.4(k)(4)(i)(B)(2)]

The May 28, 1994 harvest falls within January 1, 1988 and December 31, 1994. I will accept Mr. Kingsley's characterization of the F/V DRU-DROP's length overall as thirty-six feet. But, according to the official LLP record, the harvest was *not* with pot or jig gear. The May 28, 1994 harvest was with hook-and-line gear and therefore does not satisfy this requirement. I note that the official LLP record shows that the F/V DRU-DROP harvested license limitation groundfish in the Central Gulf with jig gear but on October 3, 1999, long after December 31, 1994.

[3] The vessel made one harvest of license limitation groundfish harvest in the Gulf of Alaska between January 1, 1988 to June 17, 1995; one harvest of BSAI king or Tanner crab between January 1, 1988 and February 9, 1992; and one harvest of any groundfish in the Gulf of Alaska or BSAI between February 10, 1992 and December 11, 1994, with trawl gear or longline gear, except sablefish with fixed gear. [50 C.F.R. § 679.4(k)(4)(i)(B)(3)]

This regulation has three parts. The May 28, 1994 harvest of sharks and skates satisfies two of the three parts. It is a harvest of license limitation groundfish in the GOA between January 1, 1988 and June 17, 1995. It is also a groundfish harvest in GOA or BSAI between February 10, 1992 and December 11, 1994 using trawl or longline gear and it is not a harvest of sablefish with fixed gear.

But the official LLP record does *not* show the F/V DRU-DROP harvested any king or Tanner crab in BSAI between January 1, 1988 and February 9, 1992. In fact, the official LLP record does not show that the F/V DRU-DROP harvested any BSAI king or Tanner crab from 1988 through 1999. Without the crab harvest, the F/V DRU-DROP does not satisfy this way of meeting the general qualification period.

I note that the F/V DRU-DROP *does* meet the harvest requirement for the endorsement qualification period for an LLP license with a Central Gulf endorsement: a vessel under sixty feet must make one harvest of license limitation groundfish in the Central Gulf area between January 1, 1992 to June 17, 1995. [50 C.F.R. § 679.4(k)(4)(ii)(D)(3)] The May 28, 1994 harvest was of license limitation groundfish, it occurred in the Central Gulf area and it was between January 1, 1992 and June 17, 1995.

But an applicant must meet *both* the general qualification period [GQP] requirement and the endorsement qualification period [EQP] requirement. Mr. Kingsley did not submit, to RAM or to this Office, any evidence or argument that the official LLP record is incorrect. I therefore conclude that Mr. Kingsley does not qualify for an LLP groundfish license with a Gulf of Alaska endorsement because the F/V DRU-DROP does not meet the harvest requirement for the general qualification period in 50 C.F.R. § 679.4(k)(4)(i)(B).

2. Does Mr. Kingsley qualify for an LLP crab license, based on the fishing history of the

F/V DRU-DROP?

To qualify for an LLP crab license with any endorsement, Mr. Kingsley must show that the F/V DRU-DROP made harvests that meet the requirement in the general qualification period in one of two ways. Again, the regulatory requirement for the general qualification period is in bold, followed by an analysis of whether the F/V DRU-DROP meets the requirement.

[1] The vessel made one harvest of any LLP crab species between January 1, 1988 and June 27, 1992. [50 C.F.R. § 679.4(k)(5)(i)]

According to the official LLP record, the F/V DRU-DROP made no harvests of any LLP crab during this period.

[2] The vessel made one harvest of any LLP crab species between January 1, 1988 and December 31, 1994; one harvest of groundfish in the Gulf of Alaska or BSAI between January 1, 1988 and February 9, 1992, except sablefish caught with fixed gear; and one harvest of any BSAI king or Tanner crab between February 10, 1992 and December 11, 1994. [50 C.F.R. § 679.4(k)(5)(ii)]

According to the official LLP record, the F/V DRU-DROP made no harvests of any LLP crab from 1988 to 1999 and made no groundfish harvests in GOA or BSAI between January 1, 1988 and February 9, 1992. Therefore, according to the official LLP record, the F/V DRU-DROP did not make the required harvests in the general qualification period for an LLP crab license.

Mr. Kingsley applied for all crab license endorsements. To receive any crab license endorsement, in addition to the harvest in the general qualification period, Mr. Kingsley must show that the F/V DRU-DROP harvested the specific crab that is the subject of the endorsement during an endorsement qualification period.⁹ The beginning dates of the endorsement qualification period differ for different endorsements, but the earliest beginning date is January 1, 1991, which is for the Bristol Bay red king endorsement.¹⁰ The endorsement qualification periods for all crab endorsements end December 31, 1994. According to the official LLP record, the F/V DRU-DROP made no harvests of any LLP crab species between 1988 and 1999 and therefore did not meet the requirements in the endorsement qualification period for any LLP crab license.

Mr. Kingsley did not submit, to RAM or to this Office, any argument or evidence that the official LLP record was wrong and that the F/V DRU-DROP made the harvests required for an LLP crab license in the general qualification period and any endorsement qualification period. Mr. Kingsley did not show that the official LLP record was incorrect. I therefore conclude that

⁹ 50 C.F.R. § 679.4(k)(5)(ii).

¹⁰ 50 C.F.R. § 679.4(k)(5)(ii)(F).

Mr. Kingsley does not qualify for an LLP crab license, based on the fishing history of the F/V DRU-DROP.

FINDINGS OF FACT

1. The F/V DRU-DROP did not make the documented harvests in the general qualification period for an LLP groundfish license with a Gulf of Alaska endorsement, which are required by 50 C.F.R. § 679.4(k)(4)(i)(B).
2. The F/V DRU-DROP did not make the documented harvests in the general qualification period and the endorsement qualification period for an LLP crab license with any endorsement, which are required by 50 C.F.R. § 679.4(k)(5).

CONCLUSIONS OF LAW

1. Mr. Kingsley does not qualify for an LLP groundfish license, based on the fishing history of the F/V DRU-DROP.
2. Mr. Kingsley does not qualify for an LLP crab license, based on the fishing history of the F/V DRU-DROP.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect June 24, 2002, unless by that date the Regional Administrator orders review of the Decision.

Any party 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, June 3, 2002. 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 or points and authorities in support of the motion.

Mary Alice McKeen
Appeals Officer