

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 02-0012  
)  
KARM ENTERPRISES, Inc. ) DECISION  
Appellant )  
\_\_\_\_\_ ) May 14, 2003

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) that denied Appellant's application for a groundfish license under the North Pacific Groundfish and Crab License Limitation Program (LLP), with endorsements for the Aleutian Islands, Bering Sea, and Western Gulf of Alaska, based on purchase of the fishing history of the catcher/processor vessel, the F/V STORFJORD [formerly known as the F/V YUKON].

The Appellant has filed a timely appeal of the IAD. Appellant can file an appeal because the IAD directly and adversely affects its interests. [50 C.F.R. § 679.43(b)] Appellant requested an oral hearing, but an oral hearing is not necessary in this case because the record contains sufficient information on which to render a decision. [50 C.F.R. §679.42(g)(2)]

ISSUE

Does Appellant qualify for an LLP groundfish license, with endorsements for the Aleutian Islands, Bering Sea, and Western Gulf of Alaska, based on purchase of the fishing history of the F/V STORFJORD?

ANALYSIS

To qualify for an LLP groundfish license, based on the endorsements that Appellant seeks on appeal, Appellant must establish that the F/V STORFJORD made (1) at least one documented harvest of groundfish in the Bering Sea and Aleutian Islands (BSAI) or the Gulf of Alaska, during the general qualifying period, between January 1, 1988, and June 27, 1992;<sup>1</sup> and (2) the requisite documented harvests of groundfish in each of the endorsement areas claimed by Appellant during the appropriate endorsement qualifying periods.<sup>2</sup>

A "documented harvest" of groundfish is a lawful harvest of groundfish recorded in compliance

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<sup>1</sup>50 C.F.R. § 679.4(k)(4)(i).

<sup>2</sup>50 C.F.R. § 679.4(k)(4)(ii).

with Federal and state commercial fishing regulations in effect at the time of harvesting.<sup>3</sup>

The official LLP record does not show that the F/V STORFJORD made any documented harvests of groundfish in the BSAI or Gulf of Alaska during the general qualifying period.

On appeal, Appellant produced a daily cumulative production logbook (for the period between July 28, 1991, and August 14, 1991), a weekly production report (for the week ending July 28, 1991), and a state of Alaska fish ticket (August 30, 1991), that show the F/V STORFJORD made groundfish harvests in the BSAI during the general qualifying period in 1991.<sup>4</sup> Therefore, I find that the F/V STORFJORD made groundfish harvests in the BSAI during the GQP in 1991.

The Federal commercial fishing regulations during 1991 required the F/V STORFJORD to (1) record the groundfish harvests in a daily cumulative production logbook and to submit the logbook to NMFS by November 1, 1991;<sup>5</sup> and (2) record the groundfish harvests in a weekly production report and to submit the report to NMFS within 48 hours of July 28, 1991.<sup>6</sup> The State of Alaska commercial fishing regulations during 1991 also required the F/V STORFJORD to record the groundfish harvests on an Alaska Department of Fish and Game fish ticket and to submit the state fish ticket to the State of Alaska within one week of August 30, 1991.<sup>7</sup> Neither the administrative record nor the record on appeal shows that any of these documents were ever submitted to NMFS and the State of Alaska. Therefore, I find that the F/V STORFJORD did not submit a daily cumulative production logbook and weekly production report to NMFS, and a state fish ticket to the State of Alaska, for the harvest of groundfish aboard the vessel during 1991.

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<sup>3</sup>50 C.F.R. § 679.2.

<sup>4</sup>An August 30, 1991, bill of lading shows the groundfish was delivered to the F/V AKISHIO MARU in Dutch Harbor, Alaska.

<sup>5</sup>50 C.F.R. § 675.5(b)(3) (1991). Paragraph (b)(3)(iv) required quarterly submission of the Daily Cumulative Production Logbook. A copy for activities conducted during the third quarter had to be submitted by November 1.

<sup>6</sup>50 C.F.R. § 675.5(c)(2) (1991). The 48-hour reporting requirement took effect March 1, 1991. Until that time, the deadline for submitting the weekly production report had been one week after the end of the reporting period. Interim final rule, 56 Fed.Reg. 9636, 9645 (March 7, 1991).

<sup>7</sup>5 AAC § 39.130(b) (July 1991 cum. supp.) provided, in relevant part, “. . . [E]ach person or company who catches and processes his or her own catch or has that catch processed by another person or company, shall record each landing on and ADF&G fish ticket. Fish tickets must be submitted to a local representative of the department within seven days after landing, or as otherwise specified by the department for each particular area and fishery.” The current recording/reporting provision is found at 5 AAC § 39.130(c) (2003). Recording and submission of fish tickets on a weekly basis has been a state requirement at least since 1972. *See*, Alaska Administrative Register 42, July 1972.

The Appellant argues that the LLP definition of “documented harvest” requires only that the harvests be *recorded* in compliance with Federal and state regulations, not *filed* in accordance with those regulations. Appellant further argues that there is no reason to believe the information recorded is inaccurate and that the fact the documents were not properly filed does not impair their credibility. [Appeal at 5.]

The question here is not whether the harvests in question actually took place. I have already found that they did. The question is whether the harvests were recorded in compliance with the appropriate Federal and state regulations in effect at that time. The applicable Federal regulations, already discussed above, are entitled “recordkeeping and reporting.” The requirements to maintain logbooks and to submit them in a timely fashion are part and parcel of same regulation. Likewise, the Alaska regulation dealing with fish tickets requires both the recording of harvests on fish tickets and the submission of those fish tickets to the Department of Fish and Game. It would undermine the purpose and value of these Federal and state records if I were to decide that merely recording the harvests on the required forms, but never turning them in to the government, was sufficient compliance with these regulations to meet the definition of “documented harvest.”

A reasonable and common-sense reading of the “documented harvest” definition considers these regulations in their entirety and does not require me to award LLP credit for partial compliance. Therefore, I read the phrase “recorded in compliance with Federal and state commercial fishing regulations” to include the submission or reporting requirements of those regulations.

I conclude that because the F/V STORFJORD failed to comply with both the Federal and State of Alaska commercial fishing regulations requiring the submission of these documents to NMFS and the State of Alaska, the groundfish harvests recorded on those documents do not meet the definition of “documented harvests.”

Because the F/V STORFJORD did not submit the weekly production report to NMFS and the fish ticket to the State of Alaska by the required deadlines, I do not need to determine whether the U.S. Coast Guard’s seizure of the vessel’s records on September 18, 1991, would have legally excused the Appellant from submitting the daily cumulative production logbook by November 1 of that year. Nor do I need to determine whether the F/V STORFJORD’s harvests of groundfish during 1991 were “lawful harvests,” as required in the definition of “documented harvest,” despite evidence that there was no certified NMFS fishing observer aboard the vessel, that the vessel did not report its whereabouts, and that the vessel harvested prohibited species of fish. Clearly, however, harvests that were unlawful cannot be considered “documented harvests” for purposes of the LLP.

Appellant does not claim, nor does the evidence show, that the F/V STORFJORD made any other harvests of groundfish during the GQP. As a result, I find that the vessel did not make a documented harvest of groundfish in the BSAI during the GQP between January 1, 1988, and June 27, 1992. Therefore, Appellant does not qualify for an LLP groundfish license, with endorsements for the Aleutian Islands, Bering Sea, and Western Gulf of Alaska, based on the

fishing history of the F/V STORFJORD.

#### FINDINGS OF FACT

1. The F/V STORFJORD made groundfish harvests in the BSAI during the GQP in 1991.
2. The F/V STORFJORD did not submit a daily cumulative production logbook and weekly production report to NMFS, and a state fish ticket to the State of Alaska, for the harvest of groundfish aboard the vessel during 1991.

#### CONCLUSIONS OF LAW

1. In the definition of “documented harvest” in 50 C.F.R. § 679.2, the phrase “recorded in compliance with Federal and state commercial fishing regulations” includes the submission or reporting requirements of those regulations.
2. The groundfish harvests made aboard the F/V STORFJORD during 1991 were not recorded in compliance with Federal and state commercial fishing regulations, and therefore they cannot be considered "documented harvests" of groundfish.
3. The F/V STORFJORD did not make at least one documented harvest of groundfish in the BSAI during the GQP, between January 1, 1988, and June 27, 1992.
4. Appellant does not qualify for an LLP groundfish license, with endorsements for the Aleutian Islands, Bering Sea, and Western Gulf of Alaska, based on purchase of the fishing history of F/V STORFJORD.

#### DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect June 13, 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, May 27, 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.

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Randall J. Moen  
Appeals Officer