

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 02-0020
)	
OCEAN STORM FISHERIES, INC.,)	DECISION
Appellant)	
_____)	January 12, 2005

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) that designated Appellant's groundfish license for trawl gear, rather than trawl/non-trawl gear, under the North Pacific Groundfish and Crab License Limitation Program (LLP), based on the LLP qualifying vessel, the F/V OCEAN STORM (ADFG 64667).

Appellant filed a timely appeal of the IAD. On appeal, Appellant claims¹ that its LLP groundfish license qualifies to be designated for trawl/non-trawl gear because it purchased the non-trawl fishing history of the F/V DECISION (ADFG 39178) in 1993.

Appellant can file an appeal because the IAD directly and adversely affects its interests. [50 C.F.R. § 679.43(b)] 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. § 679.42(m)(4)]

ISSUE

Does Appellant's LLP groundfish license qualify for a trawl/non-trawl gear designation, based on the combined fishing history of the F/V OCEAN STORM and F/V DECISION?

ANALYSIS

On September 24, 2001, the National Marine Fisheries Service published a new LLP regulation that requires an applicant's LLP groundfish license to be designated with one of three gear types: trawl gear, trawl/non-trawl gear, or non-trawl gear, depending on the type of gear used by the applicant's qualifying vessel between January 1, 1988, and June 17, 1995.² The purpose of the new regulation is to "prevent movement between the trawl sector and the non-trawl sector."³

The LLP regulations provide for an LLP license to be designated for trawl/non-trawl gear, if the "qualifying vessel" (for the license) harvested an LLP species with trawl gear and non-trawl gear

¹Mr. Mike Alfieri's letter to NMFS, November 12, 2001.

²50 C.F.R § 679.4(k)(3)(iv).

³66 Fed. Reg. 17,398 (March 30, 2001).

between January 1, 1988, and June 17, 1995.⁴ The administrative record shows that the F/V OCEAN STORM is the “qualifying vessel” for Appellant’s LLP groundfish license,⁵ and that, between January 1, 1988, and June 17, 1995, the vessel harvested LLP species only with trawl gear.⁶ Appellant does not dispute these findings.

Appellant argues that its LLP groundfish license can be designated trawl/non-trawl based on the combined fishing history of the F/V OCEAN STORM and the F/V DECISION. The Appellant claims, without submitting any proof, that it purchased the F/V DECISION in 1992, sold the vessel in 1993, and that “all groundfish rights, including non-trawl, were transferred to the F/V Ocean Storm.”⁷ The official LLP record shows that the fishing history of the F/V DECISION was used to qualify another person for an LLP groundfish license.⁸ Based on this fact, I presume that the Appellant does not own the fishing history of the F/V DECISION and, therefore, is not the eligible applicant to claim the benefit of that fishing history.⁹

Even if the Appellant were to establish that it does own the fishing history of the F/V DECISION, it still could not combine that fishing history with the fishing history of the F/V OCEAN STORM to qualify for the trawl/non-trawl gear designation. The LLP regulations explicitly provide that the trawl/non-trawl gear designation will be assigned only if both trawl and non-trawl gear were used to harvest LLP species *from the qualifying vessel* during the period January 1, 1988, through June 17, 1995. Thus, only the gear used on a single vessel, the qualifying vessel, is considered when determining the gear designation. Because the F/V OCEAN STORM did not harvest LLP species with non-trawl gear between January 1, 1988, and June 17, 1995, I conclude that Appellant's LLP groundfish license does not qualify for the trawl/non-trawl gear designation.

FINDINGS OF FACT

1. The F/V OCEAN STORM is the qualifying vessel for Appellant’s LLP groundfish license.
2. Between January 1, 1988, and June 17, 1995, the F/V OCEAN STORM harvested LLP species only with trawl gear.

⁴50 C.F.R § 679.4(k)(3)(iv)(B).

⁵Appellant's LLP groundfish license, May 2, 2000.

⁶50 C.F.R § 679.4(k)(3)(iv).

⁷Mike Alfieri letter (Nov. 12, 2001).

⁸The NMFS official LLP record shows that the F/V DECISION (ADFG 39178) is the “qualifying vessel” for LLP groundfish license LLG 2926, which is held by James Spearin. That license is designated for trawl/non-trawl gear.

⁹See 50 C.F.R. §679.2 (definition of “eligible applicant”).

3. The fishing history of the F/V DECISION was used to qualify another person for an LLP groundfish license.
4. The Appellant does not own the fishing history of the F/V DECISION and, therefore, is not the eligible applicant to claim the benefit of that fishing history.
5. The LLP regulations explicitly provide that the trawl/non-trawl gear designation will be assigned only if both trawl and non-trawl gear were used to harvest LLP species *from the qualifying vessel* during the period January 1, 1988, through June 17, 1995.
6. Only the gear used on a single vessel, the qualifying vessel, is considered when determining the gear designation.

CONCLUSION OF LAW

The Appellant's LLP groundfish license does not qualify for the trawl/non-trawl gear designation.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect February 11, 2005, 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, January 24, 2005. 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