

agreements.²

I have no reason to doubt that Mr. Shadle chartered the F/V INFIDEL during 1991, 1992, 1993, and 1994, under essentially the same terms as the 1992 bareboat charter agreement. However, the express language of the 1992 bareboat charter agreement does not “clearly and unambiguously” provide for transfer of the fishing history of the F/V INFIDEL to Mr. Shadle. The 1992 charter agreement provides for Mr. Shadle to skipper, and assume full and sole responsibility for, the vessel; to pay all vessel expenses; to pay for use of the vessel based on a percentage of the vessel’s gross sales from commercial fishing; and to “assume ... all ... benefit of the vessel.” But none of the charter’s provisions expressly mention the transfer of the vessel’s fishing history to him.

Mr. Shadle did not produce any other bareboat charter agreements for the vessel, nor did he produce an affidavit from the owner of the vessel that it had transferred the LLP fishing history of the vessel to him. Therefore, I find that the LLP qualifying fishing history of the F/V INFIDEL was not transferred to Mr. Shadle based on the express terms of a written contract. As a result, I conclude that he does not qualify for an LLP groundfish license based on the express terms of a written contract that clearly and unambiguously transferred the LLP qualifying fishing history of the F/V INFIDEL to him.

The NMFS official LLP record shows that the fishing history of the F/V INFIDEL has already been used to qualify another applicant for an LLP groundfish license.³ The LLP regulations provide for only one LLP groundfish license to be issued on the basis of the LLP qualifying fishing history of a single vessel.⁴ Therefore, if Mr. Shadle had produced a bareboat charter agreement that expressly provided for the transfer of the LLP fishing history of the F/V INFIDEL to him, I would have had to determine the proper eligible applicant for the LLP groundfish license in this case.

The language of the LLP regulations can be reasonably interpreted to require the *complete* LLP qualifying fishing history of a vessel to be transferred under the express terms of a written contract to qualify an applicant for an LLP groundfish license.⁵ Therefore, I would have also had to determine whether the alleged bareboat charter agreements had provided for the transfer of the *complete* LLP qualifying fishing history of the F/V INFIDEL to Mr. Shadle (and not just the fishing history for the term of the charters), before I could have decided whether he qualified for

²Mr. Shadle’s affidavit, January 21, 2003, at 2.

³The current LLP groundfish license holder is Mr. David Beaudin, license #LLG3560. See the NMFS official list of LLP groundfish licenses, available at http://www.fakr.noaa.gov/ram/daily/llp_gf.pdf

⁴Final Rule, 63 Fed. Reg. 52,643 (October 1, 1998).

⁵Id.

an LLP groundfish license.⁶

FINDINGS OF FACT

1. None of the provisions in the 1992 bareboat charter agreement (between Mr. Shadle and the owner of the F/V INFIDEL) expressly mention the transfer of the fishing history of the vessel to Mr. Shadle.
2. The LLP qualifying fishing history of the F/V INFIDEL was not transferred to Mr. Shadle based on the express terms of a written contract.

CONCLUSIONS OF LAW

1. The express language of the 1992 bareboat charter agreement (between Mr. Shadle and the owner of the F/V INFIDEL) does not “clearly and unambiguously” provide for transfer of the fishing history of the vessel to Mr. Shadle.
2. Mr. Shadle does not qualify for an LLP groundfish license based on the express terms of a written contract that clearly and unambiguously transferred the LLP qualifying fishing history of the F/V INFIDEL to him.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on August 23, 2004, 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 on August 2, 2004. 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

⁶In several cases, we have ruled that the terms of private contracts cannot be used or interpreted to exempt an applicant from satisfying the regulatory eligibility requirements of NMFS. *See e.g., Cadden v. Levenhagen and Pugh*, Appeal No. 95-0013, January 17, 1996; and *Prowler Partnership v. Samuelson*, Decision on Reconsideration (Part I), Appeal No. 95-0084, March 12, 1996; and *Alwert Fisheries, Inc., v. Oregon Seafood Producers and Dorothy Painter*, Appeal No. 0073, March 21, 1996.