

The F/V LUCY O's harvest in the Central Gulf occurred on May 29, 1994 in Federal waters.⁴ According to NMFS, the F/V LUCY O had an FFP in 1979, 1980, 1981, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1995, 1996 to 2006, but not 1993 or 1994.⁵

On appeal, Ms. Olney argued that the F/V LUCY O, not the F/V JOHNNY ROGER, Ms. Olney's other vessel, made the documented harvest of groundfish in Southeast Alaska on June 12, 1993 that was reported on fish ticket J93 039465.⁶

Pursuant to 50 C.F.R. § 679.43(g)(3), I held a hearing on whether the official LLP record should be amended and the harvest on fish ticket J93 039465 attributed to the F/V LUCY O. During the hearing, Ms. Olney withdrew her appeal of the denial of Western Gulf and Central Gulf endorsements.⁷ But Ms. Olney maintained her right to receive an LLP groundfish license with a Southeast Outside endorsement.

I conclude that the record now has sufficient information for me to decide this issue and that all procedural requirements have been met, as required by 50 C.F.R. § 679.43(k). I therefore close the record and issue this decision on Ms. Olney's appeal.

SUMMARY

NMFS does not dispute that Ms. Olney met the general qualification period requirement in 50 C.F.R. § 679.4(k)(4)(i) for an LLP groundfish license based on the fishing history of the F/V LUCY O. On appeal, Ms. Olney has shown that she meets the endorsement qualification period requirement for an LLP license with a Southeast Outside area endorsement in 50 C.F.R. § 679.4(k)(4)(ii)(O) and therefore should receive such a license. The endorsement qualification period is January 1, 1992 to June 17, 1995.

Ms. Olney has shown that the official LLP record of the fishing history F/V LUCY O should be amended. Ms. Olney has shown that the F/V LUCY O made a documented harvest of license limitation groundfish in State waters shoreward of the Southeast Outside District on June 12, 1993 that was properly recorded on fish ticket J93 039465.

⁴ The harvest was recorded on fish ticket G94 006627 in State statistical area 395800. State statistical area 395800 is in Federal waters. Map 6, ADFG Groundfish Statistical Area Maps, available at <http://www.cf.adfg.state.ak/us/geninfo/statmaps/chartes/chart06.pdf>. ADFG is the Alaska Department of Fish and Game. State waters are marked on the map and extend to three miles off shore.

⁵ Memorandum from Robin Martin to Tracy Buck (Nov. 27, 2002) (Document 1); Memorandum from Tracy Buck to Mary Alice McKeen (Sept. 14, 2006) (Document 23). ZZ

⁶ Letter from Virginia Olney to RAM (Dec. 6, 2002). Ms. Olney made this argument to RAM after RAM issued the IAD. RAM therefore did not evaluate this claim in the IAD.

⁷ Hearing Tape, Tape 1, Side A, Log 290 (Aug. 2, 2006).

ISSUE

Did Ms. Olney make a documented harvest of license limitation groundfish from the F/V LUCY O in the endorsement qualification period for a Southeast Outside endorsement, as required by 50 C.F.R. § 679.4(k)(ii)(O)?

ANALYSIS

Federal regulation 50 C.F.R. § 679.4(k)(4)(ii)(O) provides:

A groundfish license will be assigned a Southeast Outside area endorsement if at least one documented harvest of any amount of license limitation groundfish was made during the period beginning January 1, 1992, through June 17, 1995 in the Southeast Outside District or in waters shoreward of that district from a vessel in vessel length category “C” and that meets the requirements for a catcher/processor designation or a catcher vessel designation.⁸

RAM consulted the official LLP record and did not find any harvests of license limitation groundfish from the F/V LUCY O in the Southeast Outside District, or in waters shoreward of that district, between January 1, 1992 and June 17, 1995.⁹

On appeal, Ms. Olney argues the official LLP record should be amended and the harvest on fish ticket J93 039466 should be credited to the F/V LUCY O, not the F/V JOHNNY ROGER, which was Ms. Olney’s other vessel.¹⁰ Ms. Olney has the burden of proving the validity of information that is inconsistent with the official LLP record.¹¹ Ms. Olney must prove by a preponderance of evidence that the facts she alleges, rather than the official LLP record, are correct.

The harvest on fish ticket J93 039466 occurred on June 12, 1993, which is within the endorsement qualification period. The fish ticket shows a harvest of silver gray rockfish, which is a license limitation groundfish.¹² The harvest occurred in State statistical area 355633, which

⁸ The regulation is in a table. I have put it in text form.

⁹ Notice of Opportunity to Submit Evidence (Jan. 18, 2000).

¹⁰ F/V JOHNNY ROGER, ADFG 20612, USCG 25970. Ms. Olney applied for an LLP license based on the fishing history of the F/V JOHNNY ROGER. I affirmed RAM’s denial because the vessel harvested groundfish, but not license limitation groundfish, in the general qualification period. *Virginia Olney*, Appeal No. 04-0007 (Aug. 11, 2005). All prior decisions of the Office of Administrative Appeals are on the NMFS Alaska Region website: <http://www.fakr.noaa.gov/appeals/default.htm>

¹¹ 50 C.F.R. § 679.4(k)(6)(v); 50 C.F.R. § 679.2 (definition of official LLP record).

¹² *See, e.g.*, Final Rule, 69 Fed. Reg. 68095, 68095 & 68,102 (Nov. 23, 2004). Fish ticket J93 039466 also shows that the vessel harvested redbanded rockfish. License limitation groundfish excludes

is in State waters shoreward of the Southeast Outside District.¹³ Since the harvest occurred in State waters, the vessel was not legally required to have an FFP.¹⁴ To harvest in State waters, the vessel was legally required to be registered with the State.¹⁵ The F/V LUCY O was registered with the State in 1993.¹⁶

The inconsistency between the official LLP record and Ms. Olney is that Ms. Olney states that the harvest was made from the F/V LUCY O and the official LLP record credits the harvest to Ms. Olney's other vessel, the F/V JOHNNY ROGER.¹⁷ I conclude that Ms. Olney has proven, by a preponderance of evidence, that the F/V LUCY O made the harvest recorded on fish ticket J93 039466 and that the fishing history of the F/V LUCY O in the official LLP record should be amended to reflect that harvest.

Ms. Olney produced a copy of fish ticket J93 039466 with "Lucy O M14685" handwritten on the line for "Vessel Name."¹⁸ It also had "IPHC # 558271" handwritten in, which is the United States Coast Guard Official Number for the F/V LUCY O. Ms. Olney's copy of the fish ticket has the imprint of a Statewide halibut permit issued by the State of Alaska, with the name, Grant

"demersal shelf rockfish east of 140° W. longitude." 50 C.F.R. § 679.2. This harvest occurred east of 140° W. longitude. From 1991 to 1994, RAM categorized redbanded rockfish caught east of 140° W. longitude as demersal shelf rockfish, and therefore not license limitation groundfish. From 1994 to the present, RAM has *not* categorized redbanded rockfish as demersal shelf rockfish and therefore *has* treated it as a license limitation groundfish. Memorandum from Mukhya Khalsa to Mary Alice McKeen (June 6, 2006) (Document 3). An LLP license is therefore necessary to conduct directed fishing for redbanded rockfish. Since fish ticket J93 039466 shows the vessel harvested silver gray rockfish, which is a license limitation groundfish without question, I do not analyze whether a harvest of redbanded rockfish caught east of 140° W. longitude from 1991 to 1994 is a documented harvest of license limitation groundfish for purposes of eligibility to receive an LLP license.

¹³ Map 5, ADFG Groundfish Statistical Area Maps, available at <http://www.cf.adfg.state.ak.us/geninfo/statmaps/chartes/chart05.pdf>

¹⁴ An FFP is required to harvest groundfish in the Gulf of Alaska. 50 C.F.R. § 679.4(b)(1). The Gulf of Alaska is specified federal waters in the Exclusive Economic Zone off Alaska. 50 C.F.R. § 679.2.

¹⁵ 5AAC 39.120(a). Registration was valid for one or two years. Alaska Statutes 16.05.530.

¹⁶ The State of Alaska Commercial Fisheries Entry Commission [CFEC] has a website that shows when vessels were registered. The F/V LUCY O (ADFG 36978), under its former name, F/V LENA L, was registered in 1993: <http://www.cfec.state.ak.us/publook/vessels.jsp> (Document 23 at page 9).

¹⁷ Memorandum from Mukhya Khalsa, RAM, to Mary Alice McKeen, with official LLP record of the fishing history of the F/V JOHNNY ROGER (June 16, 2005). Ms. Olney has copies of the fish tickets at issue in this appeal and did not wish to see the printout from the official LLP record of the fishing history for her vessels. Memorandum to Virginia Olney File (June 20, 2005).

¹⁸ Letter from Virginia Olney (Dec. 6, 2002). I could not determine what "M14685" represented.

J. Miller, and permit number B61844806G 20612. Grant Miller is Ms. Olney's ex-husband and former owner, with Ms. Olney, of the F/V LUCY O and the F/V JOHNNY ROGER.¹⁹ The State halibut permit has a vessel name as part of the card. The vessel name on Grant Miller's halibut permit is "Johnny Roger," but that is crossed out on Ms. Olney's copy. The processor is "Sea Pr Coop," which stands for Seafood Producers Cooperative.

This Office contacted the State of Alaska Commercial Fisheries Entry Commission [CFEC], the State agency that has custody of State of Alaska fish tickets. This Office obtained a copy of fish ticket J93 039465 from the CFEC.²⁰ It is the same as Ms. Olney's copy except that, on the State's copy, the F/V JOHNNY ROGER's ADFG number, "20612," is crossed out twice: the number from the imprint of the card and the handwritten number in the box labeled "ADF& G No." In the box labeled "ADF&G No," the ADFG number of the F/V LUCY O, "36978," is written in. Thus, the fish ticket in the custody of the CFEC is the same as the ticket submitted by Ms. Olney, except for the changes in the vessel ADFG number, which strengthens Ms. Olney's claim that the F/V LUCY O made the harvest.

Dorothy Frary, the CFEC staffperson who provided the fish ticket, said fish ticket J93 0139465 was changed in red ink. She said she thought a fish ticket editor at ADFG might have made the additional change.²¹ Heather Gilroy, Fisheries Statistics Manager for the International Pacific Halibut Commission, said she thought that IPHC staff might have edited the ticket to add the F/V LUCY O's ADFG number.²² Whether it was a State or Federal employee, a representative of a government fisheries management agency edited fish ticket J93 039465 by adding the F/V LUCY O's ADFG number.

I find that, when the processor submitted fish ticket J93 039465 to the State, it had the F/V LUCY O as the name of the vessel making this harvest. I further find that State or Federal fisheries management personnel edited fish ticket J93 039465 and crossed out the ADFG number of the F/V JOHNNY ROGER and put in the ADFG number of the F/V LUCY O.

The attribution of the harvest to the F/V JOHNNY ROGER in the official LLP record is understandable since that is the vessel name imprinted on Grant Miller's State of Alaska halibut permit card. But that does not mean that Grant Miller could legally use his halibut permit only on the F/V JOHNNY ROGER. Under State regulations in effect in 1993, a State permit

¹⁹ Grant Miller stated that Ms. Olney is entitled to any LLP licenses resulting from the fishing history of these two vessels. Statement by Grant Miller (April 17, 2000). The IAD concludes that Ms. Olney is the only person entitled to any LLP licenses based on the fishing history of the F/V LUCY O. IAD at 3.

²⁰ Facsimile Transmittal from Dorothy Frary to Sandra Goveia (July 17, 2006)(Document 8).

²¹ Memorandum to File from Sandra Goveia with notes (July 17, 2006) (Document 9). I do not know whether the changes in red were the changed vessel name or the changed ADFG number or both.

²² Memorandum to File by Mary Alice McKeen (Aug. 25, 2006) (Document 16).

authorized the permit holder to operate gear from any vessel within State waters to catch the species on the permit and any incidentally caught species.²³

Grant Miller made this harvest pursuant to a Statewide halibut long line permit. This permit authorized Grant Miller to catch and retain halibut, and incidentally caught species, with longline gear in State waters. Herman Savikko, the ADFG Fisheries Information Officer from 1988 to 2000, explained that the naming of a vessel on the permit began in a time when most people used only one vessel and was an additional way to identify who made the harvest.²⁴ Mr. Savikko stated it was completely proper for a permit holder to use a State permit on more than one vessel. Ms. Frary with the CFEC agreed, stating that if the permit holder used a different vessel from the one imprinted on the card, the permit holder was supposed to cross out the preprinted ADFG number and put in the correct ADFG number.²⁵

Ms. Olney testified at the hearing that the harvest on fish ticket J93 039465 was made from the F/V LUCY O. She testified that she and Grant Miller, her then-husband and fishing partner, bought the boat in 1993, the first year that Grant Miller fished the F/V LUCY O.²⁶ Ms. Olney said the same thing in her written statement.²⁷ Ms. Olney's written and oral testimony was internally consistent and consistent with the copy of fish ticket J93 039465 in her possession and in the possession of the State of Alaska. Ms. Olney also stated that it was permissible for Mr. Miller to use the permit on more than one vessel, a position corroborated by State regulation and State fisheries management personnel.²⁸

The only evidence tending to show that the F/V JOHNNY ROGER made the harvest is that the vessel name F/V JOHNNY ROGER was imprinted on the halibut permit. I find that is simply because the State issued the card with a vessel name imprinted on it. I conclude it was proper for Grant Miller to use that permit on a different vessel and that is what he did.

Based on the foregoing evidence, I find that Ms. Olney has shown by a preponderance of evidence that the harvest on fish ticket J93 039465 was made from the F/V LUCY O. I conclude that the official LLP record should be amended and the groundfish harvest reported on fish ticket J93 039465 should be credited to the F/V LUCY O.

²³ 20 AAC 05.100 (a); 20 AAC 05.120 (e) (Register 98, July 1986), current version 20 AAC 05.120(c). The official LLP record accepted the silver gray rockfish harvest but attributed it to the F/V JOHNNY ROGER.

²⁴ Memorandum to File from Mary Alice McKeen (Aug. 29, 2006) (Document 21).

²⁵ Memorandum to File from Mary Alice McKeen (Aug. 31, 2006) (Document 22).

²⁶ Hearing, Tape 1, Side A, log 70, 148 (Aug. 2, 2006).

²⁷ Statement of Virginia Olney (Dec. 6, 2002).

²⁸ Memorandum to File from Mary Alice McKeen (Aug. 29, 2006) (Document 20).

I conclude that Ms. Olney did make a documented harvest of license limitation groundfish from the F/V LUCY O in the endorsement qualification period for a Southeast Outside endorsement, as required by 50 C.F.R. § 679.4(k)(ii)(O). I therefore conclude that Ms. Olney should be issued an LLP license with a Southeast Outside endorsement.

FINDINGS OF FACT

1. Grant Miller made the harvest on June 12, 1993 that was recorded on fish ticket J93 039465 from the F/V LUCY O.
2. The harvest on fish ticket J93 039465 occurred in State waters shoreward of the Southeast Outside District.
3. When the processor submitted fish ticket J93 039465 to the State of Alaska, the fish ticket had the F/V LUCY O as the name of the vessel making the harvest.
4. State or Federal fisheries management personnel edited fish ticket J93 039465 by crossing out the ADFG number of the F/V JOHNNY ROGER and putting in the ADFG number of the F/V LUCY O.

CONCLUSIONS OF LAW

1. Ms. Olney made a documented harvest of license limitation groundfish from the F/V LUCY O in the endorsement qualification period for a Southeast Outside endorsement, as required by 50 C.F.R. § 679.4(k)(ii)(O).
2. The official LLP record should be amended and the groundfish harvest on fish ticket J93 039465 should be credited to the F/V LUCY O, not the F/V JOHNNY ROGER.
3. It was lawful for Grant Miller to harvest groundfish on his State of Alaska halibut permit from the F/V LUCY O.
4. Ms. Olney should be issued an LLP groundfish license with an area endorsement for Southeast Outside.

DISPOSITION

The portion of the IAD that denied Ms. Olney a Southeast Outside endorsement on her LLP groundfish license is VACATED. The remainder of the IAD is AFFIRMED. This Decision takes effect October 15, 2006, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. § 679.43(o).

Ms. Olney 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, September 25, 2006. 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 administrative judge, and must be accompanied by a written statement in support of the motion.

Mary Alice McKeen
Administrative Judge