

record contains sufficient information to decide this appeal, and therefore the record is now closed. [50 C.F.R. §679.43(g)(2)]

ISSUE

Does Mr. Deaver qualify for additional catcher vessel owner QS in the Bering Sea Snow crab fishery under the CRP?

ANALYSIS

Mr. Deaver claims on appeal that his vessel, the F/V PACIFIC SUN, made an additional legal landing of 1,625 pounds of Bering Sea snow crab on January 24, 1998. If he is able to substantiate his claim, he will qualify for additional catcher vessel owner QS in the Bering Sea snow crab fishery.

The official crab rationalization record does not show that the F/V PACIFIC SUN made legal landings of an additional 1,625 pounds of Bering Sea snow crab on that date. The official crab rationalization record is presumed to be correct, and Mr. Deaver bears the burden of proving otherwise.³

A State of Alaska fish ticket is the only kind of evidence that Mr. Deaver can use to demonstrate that the F/V PACIFIC SUN made an additional legal landing of crab QS.⁴ To be considered a “legal landing,” the crab must have been landed in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing.”⁵

Mr. Deaver produced two copies of Alaska state fish ticket C95-017170, one from the fisherman and the other from the processor, Unisea, Inc., to show that the F/V PACIFIC SUN made a landing of 1,625 pounds of Bering Sea snow crab on January 24, 1998.⁶ Mr. Deaver also

evidence described is insufficient to justify the factual determination sought, even if accurate. (iv) Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

³ 50 C.F.R. § 680.40(a)(2)(i).

⁴ 50 C.F.R. § 680.40(b)(4)(iii) reads: “Evidence of legal landings shall be limited to State of Alaska fish tickets.”

⁵ 50 C.F.R. § 680.40(b)(4)(ii).

⁶ The fish tickets actually show that the F/V PACIFIC SUN landed and was paid for delivery of an additional 1,625 pounds of Opilio Tanner Crab harvested in stat area 685600, which would be considered the delivery and sale of 1,625 pounds of Bering Sea snow crab.

produced a declaration⁷ and a settlement sheet⁸ from the processor. RAM had neither of these documents when it issued the IAD.

Pursuant to my request,⁹ the State of Alaska sent this Office a certified copy of the fish ticket for the landing of Bering Sea snow crab by the F/V PACIFIC SUN on January 24, 1998. The State's copy of the fish ticket does not include the additional 1,625 pounds of crab. This would explain why the crab rationalization record does not show that the vessel landed the fish.

Neither Mr. Deaver¹⁰ nor Unisea¹¹ know exactly why the additional 1,625 pounds of crab were not recorded on the State's copy of the fish ticket. Alaska state law¹² and state commercial fishing regulations¹³ required the buyer of the fish to record the purchase of the fish on an Alaska state fish ticket, and to deliver the fish ticket to the State of Alaska within seven days of the landing. Mr. Deaver speculates that the buyer/processor (Unisea, Inc.) may have incorrectly recorded the fish ticket, or later found crab that had not been reported, and added the weight of the fish to the fisherman's and processor's copies of the fish ticket, but forgot to submit a revised

⁷ Declaration of Peter Hall (Sept. 25, 2006).

⁸ Consolidated Statement of Unisea, Inc., for the F/V PACIFIC SUN, 01/01/98 through 02/01/98.

⁹ The State of Alaska's copy of fish ticket C95-017170, which was sent to us by Gail Smith, Alaska State Department of Fish and Game on March 8, 2007.

¹⁰ Mr. Deaver's letter of appeal (Sept. 28, 2006).

¹¹ Declaration of Peter Hall (Sept. 25, 2006).

¹² AS § 16.05.690 reads: "(a) Each buyer of raw fish shall keep a record of each purchase showing the name or number of the vessel from which the catch involved is taken, the date of landing, vessel license number, pounds purchased of each species, and where possible, statistical area in which the fish were taken, and other information the department requires. Records may be kept on forms provided by the department. Each person charged with keeping the records shall report them to the department in accordance with regulations adopted by it."

¹³ 5 AAC 39.130(c) reads in relevant part: Each buyer of raw fish, each fisherman selling to a buyer not licensed to process fish (a catcher/seller), and each 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 an ADF&G fish ticket. A catcher/seller must complete an ADF&G form in order to obtain fish tickets. 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 record must include ... (8)(B) the number and pounds of king, Dungeness, and Tanner crab; (C) the pounds of other fish or shellfish by species. ...

fish ticket to the State.¹⁴ This explanation is plausible given that Unisea's customary practice is to "promptly" send the state's copy of a fish ticket to the state.¹⁵

In several decisions, this Office has ruled that relevant and reliable evidence can be used on appeal to correct a timely submitted state fish ticket.¹⁶ In *Roderick Dexter*,¹⁷ we used vessel log book entries to correct an incorrect statistical area that was recorded on a sablefish fish ticket. In *Charles A. Adamonis*,¹⁸ we used vessel log book entries to supply the missing gear type that was not recorded on a Pacific halibut state fish ticket. In *S.Y.B Fisheries*,¹⁹ we used the pilot log of a vessel to supply the missing statistical area that was not recorded on a sablefish fish ticket. And, in *Brian Merritt*,²⁰ we used the testimony of the vessel's owner and the owner's partner, both of whom who had fished together, an affidavit from the processor of the fish, and corroborating information in the fish ticket itself, to correct an incorrectly recorded vessel name on the fish ticket. In each of those cases, it was obvious based on a preponderance of evidence that an error was made in the recording of an otherwise valid fish ticket.

In this case, it is evident from the processor's settlement sheet and the fisherman's and processor's copy of Alaska state fish ticket #C95-017170 that the fish ticket submitted to the State of Alaska for the landing of Bering Sea snow crab by the F/V PACIFIC SUN on January 24, 1998, was missing information that should have included an additional 1,625 pounds of Bering Sea snow crab.

The processor's settlement sheet, and the fisherman's and processor's copies of Alaska state fish ticket #C95-017170, show that the F/V PACIFIC SUN delivered 1,625 pounds of Bering Sea snow crab to Unisea, Inc., on January 24, 1998, and that Unisea, Inc., paid the vessel for the fish. Both fish tickets are signed by the fisherman, and the processor's settlement sheet shows that the vessel paid taxes on the fish. The State's copy of the fish ticket is signed by the same people, however, the fish ticket does not show that the F/V PACIFIC SUN delivered, or was paid for, an additional 1,625 pounds of Bering Sea snow crab on January 24, 1998. There is nothing in the

¹⁴ Mr. Deaver's letter to Phil Smith, RAM, (Aug. 18, 2005).

¹⁵ Declaration of Peter Hall, Administrative Specialist, Unisea, Inc. (Sept. 25, 2006).

¹⁶ The Federal regulations which govern the Federal commercial fisheries off Alaska provide that all evidence that is "relevant, material, reliable, and probative" may be considered on appeal for purposes of determining QS. [50 C.F.R. § 679.43(j)]

¹⁷ Appeal No. 95-0089 (Jan. 25, 1996).

¹⁸ Appeal No. 95-0133 (April 5, 1996).

¹⁹ Appeal No. 95-0141 (April 7, 1998).

²⁰ Appeal No. 95-0132 (March 12, 1997).

documents themselves, or elsewhere in the record, to suggest that the documents are fraudulent.

Under the circumstances, it would be unfair to deny Mr. Deaver additional QS for an additional landing of 1,625 pounds of Bering Sea snow crab. The F/V PACIFIC SUN made a good faith effort to comply with the regulations which govern the CRP. All of the information required of a state fish ticket was recorded on Mr. Deaver's fish ticket. It was the processor's obligation to send a properly recorded fish ticket to the State of Alaska for the landings made by the F/V PACIFIC SUN on January 24, 1998. However, for some unknown reason this was not done. It appears that the processor inadvertently forgot to send a revised fish ticket to the State for the additional landing of 1,625 pounds of Bering Sea snow crab. Mr. Deaver would not have known that this was not done. Based on the copy of the fish ticket given to the vessel, he could have reasonably assumed that the additional landing was reported to the State. The F/V PACIFIC SUN's copy of the fish ticket showed that it made the additional landing.

Based on a preponderance of evidence, I find that Mr. Deaver has a valid Alaska state fish ticket which shows that the F/V PACIFIC SUN made an additional legal landing of Bering Sea snow crab by the F/V PACIFIC SUN on January 24, 1998. I conclude that Mr. Deaver qualifies for additional catcher vessel owner QS in the Bering Sea snow crab fishery under the CRP, based on the additional landing of 1,624 pounds of BS snow crab on January 24, 1998.

FINDING OF FACT

Mr. Deaver has a valid Alaska state fish ticket which shows that the F/V PACIFIC SUN made an additional legal landing of Bering Sea snow crab by the F/V PACIFIC SUN on January 24, 1998.

CONCLUSION OF LAW

Mr. Deaver qualifies for additional catcher vessel owner QS in the Bering Sea snow crab fishery under the CRP, based on the additional landing of 1,624 pounds of BS snow crab on January 24, 1998.

DISPOSITION AND ORDER

The IAD that is the subject of this appeal is VACATED. RAM is ORDERED to amend the official crab rationalization record and award additional catcher vessel owner QS in the Bering Sea snow crab fishery to Mr. Deaver based on a legal landing of 1,625 pounds of Bering Sea snow crab from the F/V PACIFIC SUN on January 24, 1998. This Decision takes effect on March 12, 2008, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. §679.43(o).

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, February 21,

2008. 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.

Randall J. Moen
Administrative Judge