

with the landings of a replacement vessel to meet the eligibility amounts in 50 C.F.R. § 679.4(k)(9)(ii). The eligibility amount for a catcher vessel to receive a BSAI Pacific cod pot gear endorsement is 100,000 pounds of Pacific cod in each of two years from 1995 to 1999. Norquest submitted evidence that the F/V BEVERLY B harvested Pacific cod in 1998 and used it as crab bait.

Even if Norquest combines the landings of the F/V ALL AMERICAN with the F/V BEVERLY B, Norquest did not harvest 100,000 pounds of BSAI Pacific cod with pot or jig gear in each of two years from 1995 to 1999. First, assuming that Norquest could prove that the F/V BEVERLY B harvested 100,000 pounds of BSAI Pacific cod in 1998, Norquest did not harvest 100,000 pounds of BSAI Pacific cod in 1995, 1996, 1997 or 1999. Second, Norquest may not use Pacific cod caught from the F/V BEVERLY B and used as crab bait to meet the eligibility amounts in 50 C.F.R. § 679.4(k)(9)(ii) because the Pacific cod gear regulation provides: “Pacific cod harvested for personal bait use will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.” 50 C.F.R. § 679.4(k)(9)(iii)(C)

ISSUE

Does Norquest satisfy the requirements for endorsements to harvest BSAI Pacific cod with pot gear under the combination of landings provision in 50 C.F.R. § 679.4(k)(9)(v)(A)?

ANALYSIS

The combination of landings provision in 50 C.F.R. § 679.4(k)(9)(v)(A) provides:

(A) *Combination of landings.* A license holder may combine the landings of a sunken vessel and the landings of a vessel obtained to replace a sunken vessel to satisfy the eligibility amounts in the table at paragraph [50 C.F.R. § 679.4] (k)(9)(ii) only if he or she meets the requirements in paragraphs [50 C.F.R. § 679.4] (k)(9)(A)(1) - (4) of this section. No other combination of landings will satisfy the eligibility amounts in the table at paragraph [50 C.F.R. § 679.4] (k)(9)(ii) of this section.

- (1) The sunken vessel was used as the basis of eligibility for the license holder’s groundfish license;
- (2) The sunken vessel sank after January 1, 1995;
- (3) The vessel obtained to replace the sunken vessel was obtained by December 31 of the year 2 years after the sunken vessel sank; and
- (4) The length of the vessel obtained to replace the sunken vessel does not exceed the MLOA [maximum length overall] specified on the license holder’s groundfish license.

This regulation permits a license holder to combine the landings of a sunken vessel with a replacement vessel to meet the eligibility amounts for a BSAI Pacific cod endorsements in 50 C.F.R. § 679.4(k)(9)(ii). The eligibility amount in 50 C.F.R. § 679.4(k)(9)(ii) for the endorsements Norquest seeks – a species endorsement for BSAI Pacific cod and a gear endorsement for pot gear for a catcher vessel – is 100,000 pounds of Pacific cod caught in the

BSAI with pot or jig gear in each of any two years from 1995 to 1998.⁴

Norquest seeks these endorsements by combining the landings of a sunken vessel, the F/V ALL AMERICAN, with a replacement vessel, the F/V BEVERLY B. I assume, without deciding, that the F/V BEVERLY B is a replacement vessel for the F/V ALL AMERICAN within the meaning of 50 C.F.R. § 679.4(k)(9)(v)(B)(3). According to the official LLP record, the F/V ALL AMERICAN harvested approximately 25,000 pounds of Pacific cod in the Bering Sea with pot gear in 1995.⁵ According to the official LLP record, the F/V BEVERLY B did not harvest any Pacific cod between 1988 and 1999.⁶

Norquest submits copies of the F/V BEVERLY B's cod pot logs from January through March 1998 to prove that the vessel harvested Pacific cod for the vessel's own use as crab bait. Norquest does not assert that it sold the Pacific cod caught from the F/V BEVERLY B. The logs show the number of pots but do not record the number of pounds of Pacific cod caught in the pots. I assume, without deciding, that Norquest could prove documented harvest(s) in 1998 of 100,000 pounds of Pacific cod from these pots in 1998.

Therefore, the issue is whether Norquest can satisfy the eligibility amounts in the table at 50 C.F.R. § 679.4(k)(ii) – 100,000 pounds of Pacific cod with pot or jig gear in each of two years from 1995 to 1999 – by combining the harvests of the F/V ALL AMERICAN with the harvests of the F/V BEVERLY B. For two reasons, Norquest does not meet the eligibility amounts in 50 C.F.R. § 679.4(k)(ii) by combining the harvests of the F/V ALL AMERICAN with the F/V BEVERLY B.

The first is mathematical. Even if Norquest combined the 25,000 pounds that the F/V ALL AMERICAN caught in 1995 with the assumed 100,000 pounds that the F/V BEVERLY B caught in 1998, that does not add up to 100,000 pounds of BSAI Pacific cod in each of two years from 1995 to 1999. Norquest is either 75,000 pounds short in 1995 or 100,000 pounds short in 1996, 1997 or 1999.

The second is conceptual. The cod harvested by the F/V BEVERLY B was Pacific cod for the vessel's own use as cod bait. The Pacific cod gear regulation specifically states:

(C) Pacific cod harvested for personal bait use will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(D) A legal landing of Pacific cod in the BSAI for commercial bait will count toward

⁴ 50 C.F.R. § 679.4(k)(9)(ii)(B). The Pacific cod regulation implemented Amendment 67 to the Fishery Management Plan for the BSAI Groundfish Fishery. For background and comments on the Pacific cod regulation, see Final Rule, 72 Fed. Reg. 18,129, 18,129 - 18,138 (April 15, 2002).

⁵ Memorandum from Mukhya Khalsa to Mary Alice McKeen, August 4, 2003 (Exhibit 1).

⁶ *Id.*

eligibility amounts in the table at paragraph (k)(9)(ii) of this section.⁷

Since the F/V BEVERLY B caught Pacific cod for its own use as crab bait and did not sell it to any other entity, this constitutes personal bait use, not commercial bait use.⁸ I therefore conclude that Norquest cannot use the Pacific cod recorded in the F/V BEVERLY B's vessel logs toward satisfying the eligibility amounts in the table at 50 C.F.R. § 679.4(k)(9)(ii).

FINDINGS OF FACT

1. Norquest caught Pacific cod from the F/V BEVERLY B from January to March 1998 and used it as crab bait.
2. Norquest did not sell the Pacific cod that it caught from the F/V BEVERLY B from January to March 1998.
3. Norquest did not harvest 100,000 pounds of BSAI Pacific cod with pot or jig gear in each of two years from 1995 to 1999.

CONCLUSIONS OF LAW

1. Norquest used the Pacific cod it caught from January to March 1998 for personal bait use within the meaning of 50 C.F.R. § 679.4(k)(9)(iii).
2. Norquest did not use the Pacific cod it caught from January to March 1998 for commercial bait within the meaning of 50 C.F.R. § 679.4(k)(9)(iii).
3. Norquest cannot combine the Pacific cod caught from the F/V BEVERLY B from January to March 1998 with the Pacific cod caught from the F/V ALL AMERICAN toward meeting the eligibility amounts for a Pacific cod endorsement in the table at 50 C.F.R. § 679.4(k)(9)(ii).

⁷ 50 C.F.R. § 679.4(k)(9)(iii)(C). This provision in the Pacific cod gear regulation is consistent with prior decisions by this Office. The LLP regulations, as originally adopted, did not have a Pacific cod endorsement. Final Rule, 63 Fed. Reg. 52,642 (1998). But, even without this endorsement, this Office had to decide whether Pacific cod caught and used for the applicant's own crab bait could count as a documented harvest of license limitation groundfish toward receiving area endorsements on an LLP groundfish: Aleutian Islands, Bering Sea, Central Gulf, Western Gulf, Southeastern Outside. This Office concluded that [1] for a harvest of groundfish to count toward an LLP license, it must be a commercial harvest, and [2] groundfish used as the applicant's own bait is not a commercial harvest. *Willard S. Ferris*, Appeal No. 01-0004 (Jan. 18, 2002); *Paula Brogdon*, Appeal No. 00-0011 (Feb. 26, 2002); *Ronald J. Tennison*, Appeal No. 00-0012 (April 5, 2002), *Darjen, Inc.*, Appeal No. 00-0015 (Dec. 31, 2002). These decisions are available on the NMFS Alaska Region website, <http://www.fakr.noaa.gov/appeals/default.htm>.

⁸ See *Application of Paula Brogdon*, Appeal No. 00-0011 at 5 (February 26, 2002).

4. Norquest does not satisfy the requirements for endorsements to harvest BSAI Pacific cod with pot gear under the combination of landings provision in 50 C.F.R. § 679.4(k)(9)(v)(A).

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect November 24, 2003, unless by that date the Regional Administrator orders review of the Decision.

Any party 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, November 3, 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 or points and authorities in support of the motion.

Mary Alice McKeen
Appeals Officer