

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 01-0009
)	
PACIFIC RIM FISHERIES, INC.)	DECISION
Appellant)	
)	September 10, 2004
_____)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on June 4, 2001, that approved Appellant's application for a groundfish license and a crab license under the North Pacific Groundfish and Crab License Limitation Program (LLP), as the owner of an LLP qualifying vessel, the F/V ARCTIC DAWN.

The IAD endorsed Appellant's LLP groundfish license (#LLG3229) for the Bering Sea groundfish fishery, but denied an endorsement for the Aleutian Islands groundfish fishery. The IAD also endorsed Appellant's LLP crab license (#LLC3230) for the Aleutian Islands red king crab, St. Matthew blue king crab, Bristol Bay red king crab, and Bering Sea/Aleutian Islands Tanner crab fisheries, but denied an endorsement for the Aleutian Islands brown king crab, Norton Sound red and blue king crab, and Pribilof red and blue king crab fisheries.

Appellant filed a timely appeal of the IAD. Appellant can appeal the IAD because the IAD directly and adversely affects Appellant's interests.¹ The Appellant did not request an oral hearing, and I did not hold a hearing because the record contains sufficient information on which to reach a final decision.²

ISSUES

1. Does the Appellant qualify for an Aleutian Islands area endorsement on its LLP groundfish license #LLG3229?
2. Does the Appellant qualify for area/species endorsements for the Pribilof red and blue king crab, Aleutian Islands brown king crab, and Norton Sound red and blue king crab fisheries on its LLP crab license #LLC3230?

¹50 C.F.R. § 679.43(b).

²50 C.F.R. § 679.43(m)(4).

ANALYSIS

To qualify for an Aleutian Islands area endorsement on its LLP groundfish license, the Appellant must establish that the F/V ARCTIC DAWN made at least one documented harvest of Aleutian Islands groundfish between January 1, 1992, and June 17, 1995.³ To qualify for area/species endorsements for the Pribilof red and blue king crab, Aleutian Islands brown king crab, and Norton Sound red and blue king crab fisheries on its LLP crab license, the Appellant must establish that the F/V ARCTIC DAWN made at least (1) one documented harvest of Pribilof red or blue king crab between January 1, 1993, and December 31, 1994; (2) three documented harvests of Aleutian Islands brown king crab between January 1, 1992, and December 31, 1994; and (3) one documented harvest of Norton Sound red or blue king crab between January 1, 1993, and December 31, 1994.⁴

The NMFS official LLP record does not show that the F/V ARCTIC DAWN made the requisite documented harvests to qualify for any of the endorsements sought by Appellant. Appellant does not dispute this. Therefore, I find that the F/V ARCTIC DAWN did not make the requisite documented harvests to qualify for an Aleutian Islands area endorsement on its LLP groundfish license; or area/species endorsements for the Pribilof red and blue king, Aleutian Islands brown king, or Norton Sound red and blue king crab fisheries on its LLP crab license.

Even though the F/V ARCTIC DAWN did not make the requisite documented harvests for the four endorsements the Appellant seeks on appeal, the Appellant can still qualify for these LLP endorsements if it can establish that an “unavoidable circumstance” prevented the vessel from participating in the respective fisheries and making the requisite documented harvests.⁵ Under the unavoidable circumstances provision, Appellant must establish, among other facts, that the F/V ARCTIC DAWN made at least one documented harvest of groundfish and of the appropriate crab species in the specific areas that correspond to the endorsements, *after* the unavoidable circumstance occurred but *before* June 17, 1995.⁶

The Appellant claims that a retrofit of the vessel, “unavoidable economic conditions” that made three fisheries unprofitable,⁷ and the closure of the Pribilof blue king fishery during 1993 and

³50 C.F.R. § 679.4(k)(ii)(A).

⁴50 C.F.R. § 679.4(k)(5)(ii)(A), (D), and (G).

⁵50 C.F.R. § 679.4(k)(8)(iv).

⁶50 C.F.R. § 679.4(k)(8)(iv)(E).

⁷The Appellant mentions that the AI groundfish fishery, the Norton Sound red and blue king crab fishery, and the Pribilof Islands red and blue king crab fisheries were not profitable before and after the qualifying periods, which “forced us to take refuge in the other fisheries of this region.” Appeal at 2-3.

1994,⁸ prevented the F/V ARCTIC DAWN from making the requisite documented harvests. Even if true, none of those circumstances can be legally construed as an "unavoidable circumstance" because the record on appeal does not show that the F/V ARCTIC DAWN made at least one documented harvest of Aleutian Islands groundfish, Pribilof red or blue king crab, Aleutian Islands brown king crab, or Norton Sound red or blue king crab *after* the alleged events, but *before* June 17, 1995. Therefore, Appellant cannot qualify for any of the endorsements that it seeks on appeal, based on an unavoidable circumstance.

The Appellant states that it relies on these fisheries as its "primary source of income," and that, in 1994, it spent \$250,000 to \$300,000 on equipment specifically designed to enable the F/V ARCTIC DAWN for the Aleutian Islands brown king crab fishery. The language of the LLP regulations does not provide a financial hardship exception to the documented harvest requirements for the requested endorsements in this case. Therefore, I do not have the authority to grant relief to Appellant on that basis.

The Appellant asserts that it is being penalized because the time period during which the Appellant had the F/V ARCTIC DAWN retrofitted to participate in the AI brown king crab fishery was a significant portion of the years retroactively chosen as the qualifying period for an AI brown king crab endorsement. The Appellant also argues that denial of the requested endorsements undermines the objectives of the LLP by eliminating from these fisheries a long-time, recent participant.

NMFS notified the public and commercial fishermen in 1990,⁹ before the LLP endorsement qualifying periods were established, that vessels entering the North Pacific groundfish and crab fisheries would not be assured of future access to those fisheries. Therefore, Appellant was not retroactively penalized as a result of the retrofit of the F/V ARCTIC DAWN. As for undermining the objectives of the LLP, I must presume that the LLP regulations accurately reflect NMFS's stated objectives of the program.¹⁰

I conclude that the Appellant does not qualify for an Aleutian Islands area endorsement to groundfish license #LLG3229. I also conclude that the Appellant does not qualify for area/species endorsements for Pribilof red and blue king crab, Aleutian Islands brown king crab,

⁸According to LLP regulations, only one harvest of Pribilof red king crab during 1993 or 1994 is required to qualify for the endorsement of an LLP crab license for Pribilof red and blue king crab. 50 C.F.R. § 679.4(k)(5)(ii)(A). While the Pribilof blue king crab fishery was closed in 1993 and 1994, the Pribilof red king crab fishery was open during those years. Therefore, Appellant could have qualified for a Pribilof red and blue king endorsement if the F/V ARCTIC DAWN had made at least one documented harvest of Pribilof red king crab in 1993 or 1994. See website for the State of Alaska Department of Fish and Game at <http://www.cf.adfg.state.ak.us/region4/shellfish/crabs/1953-03.htm>

⁹55 Fed. Reg. 36,302 (September 5, 1990).

¹⁰For the objectives of the LLP, see 62 Fed. Reg. 43,866 (August 15, 1997).

and Norton Sound red and blue king crab on its LLP crab license #LLC3230.

FINDINGS OF FACT

1. The F/V ARCTIC DAWN did not make at least one documented harvest of Aleutian Islands groundfish between January 1, 1992, and June 17, 1995.
2. The F/V ARCTIC DAWN did not make one documented harvest of Pribilof red or blue king crab between January 1, 1993, and December 31, 1994.
3. The F/V ARCTIC DAWN did not make three documented harvests of Aleutian Islands brown king crab between January 1, 1992, and December 31, 1994.
4. The F/V ARCTIC DAWN did not make one documented harvest of Norton Sound red or blue king crab between January 1, 1993, and December 31, 1994.
5. The F/V ARCTIC DAWN did not make a documented harvest of Aleutian Islands groundfish, Pribilof red or blue king crab, Aleutian Islands brown king crab, or Norton Sound red or blue king crab after any unavoidable circumstance but before June 17, 1995.

CONCLUSIONS OF LAW

1. The Appellant does not qualify for an Aleutian Islands area endorsement on its LLP groundfish license #LLG3229.
2. The Appellant does not qualify for area/species endorsements for the Pribilof red and blue king crab, Aleutian Islands brown king crab, and Norton Sound red and blue king crab fisheries on its LLP crab license #LLC3230.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect October 12, 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, September 20, 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