

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 06-0004
)
DONALD HALL,) DECISION
Appellant.)
_____)
March 23, 2010

In re Application of) Appeal No. 06-0008
)
LEONARD HERZOG,) DECISION
F/V LADY BLACKIE, LLC,)
Appellant.)
_____)
March 23, 2010

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program of the National Marine Fisheries Service (NMFS) issued an Initial Administrative Determination (IAD) on December 23, 2005, that denied Donald Hall's application for additional captain/crew Quota Share (QS) in the Pribilof Island red and blue king crab fishery under the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (CRP).¹

RAM issued an IAD on February 17, 2006, that denied Leonard Herzog's application for additional catcher vessel owner Quota Share (QS) in the Pribilof Island red and blue king crab fishery under the CRP. Mr. Herzog applied on behalf of F/V LADY BLACKIE, LLC. Mr. Herzog is the managing member of F/V LADY BLACKIE, LLC.

Mr. Hall and Mr. Herzog requested that their appeals be considered together.² I granted their request because resolution of both appeals depends on the same issue, namely, whether the 33,153 pound landing of Pribilof Island crab reported on fish ticket C94 019175 in September 1995 is a legal landing for purposes of calculating Mr. Hall's crew QS and Mr. Herzog's owner QS.³ That fish ticket recorded 33,153 pounds of crab: 3,431 of red king crab, 29,722 of blue king crab.

¹ Final Rule, 70 Fed. Reg. 10,174 (Mar. 2, 2005). This rule, and subsequent amendments, are primarily at 50 C.F.R. Part 680, available online at the NMFS Alaska Region website: <http://alaskafisheries.noaa.gov/regs/summary.htm>.

² Appeal by Donald Hall (Feb. 8, 2006) ("It is my understanding that you indicated that it would be satisfactory to file one combined appeal . . ."). Mr. Herzog stated he was submitting a supplemental brief on behalf of himself and Mr. Hall (Supplemental Brief at 14, June 13, 2006).

³ Order Consolidating Appeals, Granting Hearing and Adding Documents to the Record (Feb. 17, 2010).

Mr. Hall filed a timely appeal.⁴ He can file an appeal because the IAD directly and adversely affects his interests.⁵ Mr. Herzog filed a timely appeal.⁶ He can file an appeal because the IAD directly and adversely affects his interests.⁷

I held a telephonic hearing on March 10, 2010. The following persons testified: Donald Hall, who was a part owner and full-time operator of the F/V LADY BLACKIE from 1990 to 2001; Leonard Herzog, who owned the F/V LADY BLACKIE from 2003 to 2007; and Joseph Hogan, Assistant Plant Manager at the Peter Pan plant in King Cove Alaska, whose duties include overseeing the Peter Pan fleet and scheduling deliveries to the plant.

Mr. Herzog introduced the following exhibits. Exhibit A is pleadings from the State proceedings that resulted from the September 1995 crab delivery by Mr. Hall and other vessels after the closure of the Pribilof king crab fishery on September 22, 1995.⁸ Exhibit B is the F/V LADY BLACKIE's logbook from September 12, 1995, to September 25, 1995, kept contemporaneously by Mr. Hall.⁹ Exhibit C are maps, which Mr. Herzog generated, of the route taken by the F/V LADY BLACKIE from the northeast side of St. Paul Island, through False Pass, to King Cove, that show the distance, in nautical miles, of the route.¹⁰ Exhibit D is a vessel survey that I requested Mr. Herzog submit after the hearing.¹¹

The record contains sufficient information to decide this appeal.¹² I therefore close the record and issue this decision.¹³ Appendix 1, attached to this Decision, is a NMFS-generated map of different routes from the Pribilof Islands to King Cove, including the route taken by the F/V LADY BLACKIE from St. Paul Island through False Pass.

ISSUE

Whether the landing of crab recorded on Fish Ticket C94 019175 is a legal landing for purposes of the Crab Rationalization Program

⁴ Letter from Donald Hall to RAM and Office of Administrative Appeals (Feb. 8, 2006)

⁵ 50 C.F.R. § 679.43(b).

⁶ Notice of Appeal by Leonard Herzog (Apr. 15, 2006). Mr. Herzog followed this with Supplemental Briefing (June 15, 2006).

⁷ 50 C.F.R. § 679.43(b).

⁸ Exhibit A-1 to A-185.

⁹ Exhibit B- 1 to B-18.

¹⁰ Exhibit C-1, C-2, C-4, C-5, C-6. Exhibit C-3 was a map that NMFS staff had generated of a slightly longer route – the route through Unimak Pass.

¹¹ Exhibit D, Survey Report No. CV2852, by Jack L. McFarland, Alaska Marine Surveyors, Inc. (Dec. 11, 2002).

¹² 50 C.F.R. § 679.43(g)(2).

¹³ 50 C.F.R. §679.43(g)(2).

SUMMARY

The Pribilof red and blue king crab reported on Fish Ticket C94 019175 in September 1995 is a legal landing for purposes of the Crab Rationalization Program. RAM denied the appellants credit for this landing because, according to the Official Crab Rationalization Record, the crab was confiscated by the State of Alaska for a violation of a State regulation, 5 AAC 34.035 (h)(2), and because Mr. Hall pled no contest to a charge of violating that regulation. The State regulation provided, in 1995, that a vessel could not deliver king crab to King Cove more than 24 hours after the closure of a crab fishery in the Pribilof District. The crab was initially confiscated but a State of Alaska court subsequently ordered the proceeds from the sale of the crab returned to Mr. Hall. In this appeal, Mr. Hall showed that he did not violate 5 AAC 34.035 (h)(2) because it was not possible for the F/V LADY BLACKIE to reach King Cove within 24 hours after the closure of the Pribilof king crab fishery on September 22, 1995.

ANALYSIS

The issue in this appeal is whether the landing of crab recorded on Fish Ticket C94 019175 is a legal landing for purposes of the Crab Rationalization Program. This legal issue in turn depends on a question of fact, namely whether it was possible for Mr. Hall to have reached King Cove within 24 hours after the closure of the Pribilof king crab fishery at noon on September 22, 1995.

Section A at pages 3 - 5 describes the regulations of the Crab Rationalization Program and how I interpret them as applied to the issue in this appeal. Section B at pages 5 - 8 describes the State proceedings involving the September 1995 landing. Section C at pages 8 - 10 states the facts. Section D at pages 10 - 17 lays out the evidence supporting the key finding of fact, namely that it was not possible for Mr. Hall to have reached King Cove with the F/V LADY BLACKIE within 24 hours after the closure of the Pribilof king crab fishery at noon on September 22, 1995. Section E at pages 17 - 19 states my conclusion and, in light of that conclusion, the issues I did not need to decide.

A. CRP regulations as applied to the issue in this appeal.

The CRP regulations require RAM to calculate catcher vessel owner QS and captain/crew QS in the Pribilof red and blue king crab fishery based on the total legal landings of crab made by the applicant's vessel in that fishery during four of the following five crab fishing seasons:

- September 15 - 21, 1994;
- September 15 - 22, 1995;
- September 15 - 26, 1996;
- September 15 - 29, 1997;

- September 1 - 28, 1998.¹⁴

Evidence of a “legal landing” of crab is limited to a State of Alaska fish ticket.¹⁵

A “legal landing” is defined for purposes of initial issuance of crab QS as

crab harvested during the qualifying years (or fishing seasons) specified in Column B of Table 7 to this part and landed *in compliance with* state and Federal permitting, landing, and reporting regulations in effect at the time of the landing.¹⁶

RAM determined that this landing was not a legal landing for purposes of the CRP because Mr. Hall did not deliver the crab caught in the Pribilofs during the September 15 - 22, 1995 opening to King Cove within 24 hours after the closure of the Pribilof Islands king crab fishery at noon on September 24, 1995.

RAM determined that the landing was not “in compliance with” State of Alaska regulation, 5 AAC 34.035(h)(2)(B). That regulation stated, in 1995, that, after the closure of a king crab fishery in the Pribilof District Area, a vessel could not deliver king crab to King Cove, if the crab was caught in the Pribilof District and the crab was delivered to King Cove more than 24 hours after the closure of a Pribilof king crab fishery.¹⁷

I interpret the requirement that a landing be “in compliance with” a state regulation to mean that the landing did not violate the state regulation. The minimal requirement for violating a State regulation is “the performance of conduct that includes a voluntary act or the omission to perform an act that the person is capable of performing.”¹⁸ Mr. Hall claims that it was not possible for the F/V LADY BLACKIE to have reached King Cove within 24 hours after the closure of the Pribilof king crab fishery.¹⁹ If Mr. Hall can prove this, I conclude that the landing did *not* violate State of Alaska regulation, 5 AAC 34.05(h)(2)(E), and therefore *is* a legal landing for purposes of the Crab Rationalization Program.

The question of whether it was impossible for Donald Hall to have reached King Cove from the Pribilofs within 24 hours is a factual question. Based on the allegations and evidence in the

¹⁴ 50 C.F.R. § 680.40(b)(1); 50 C.F.R. § 680.40(b)(3); 50 C.F.R. § 680.40(c). *See* Table 7 to Part 680 - Initial Issuance of QS by Crab QS Fishery.

¹⁵ 50 C.F.R. § 680.40(b)(4)(iii).

¹⁶ 50 C.F.R. § 680.40(b)(4)(ii) (emphasis added). For catcher vessels under the CRP, “landing” constitutes “the amount of crab removed from the boat at a single location/time.” 50 C.F.R. § 680.2.

¹⁷ I quote the regulation at pages 5 - 6 *infra*.

¹⁸ Alaska Statute 11.81.600(a).

¹⁹ Affidavit of Donald Hall at ¶ 4 (Apr. 15, 2006); Herzog Supplemental Brief at 9 (June 13, 2006).

record, I concluded that Mr. Hall met the requirements for a hearing on this question.²⁰

I note that, in many situations, an allegation of impossibility to comply with a regulation would, on its face, simply not be credible. It is hard to imagine how someone could allege that it was not possible to obtain a permit or it was not possible to report a landing on a fish ticket. But this regulation required a vessel to get from point A to point B within a certain period of time and it is possible that this was not possible. Further, Mr. Hall and Mr. Herzog submitted considerable evidence that supported their request for a hearing,²¹ and that tended to show that Mr. Hall could not have reached King Cove from the Pribilofs within 24 hours after the closure of the fishery.²²

B. State proceedings.

In constructing the Official Crab Rationalization Record, RAM did not include this landing for QS credit because fish ticket C94 019175 submitted to the State of Alaska Department of Fish and Game [ADFG] indicated that the crab was seized.²³ RAM also had before it a copy of a judgment where Mr. Hall pled no contest to violating State of Alaska regulation, 5 AAC 34.035(h)(2)(B), in a proceeding before the State of Alaska District Court at Sandpoint, Alaska.²⁴

That regulation, 5 AAC 34.035(h)(2)(B), provided at the time:

5 AAC 34.035. CLOSURE OF REGISTRATION AREAS.

(h) . . . [F]ollowing the closure of any registration area in Statistical Area T, Q, or R to the taking of a species of king crab, no vessel registered for any of those areas may have that species of king crab on board in waters subject to the jurisdiction of the state . . .

²⁰ Order Consolidating Appeals, Granting Hearing and Adding Documents to the Record (Feb. 17 2010). The requirements for a hearing are at 50 C.F.R. § 679.43(g)(3).

²¹ Notice of Appeal by Leonard Herzog (Apr. 15, 2006).

²² In addition to the affidavits of Donald Hall, Leonard Herzog and Clyde Sterling, the Order Consolidating Appeals, Granting Hearing and Adding Documents to the Record noted at pages 3 - 4:

This appeal presents unusual circumstances, which support holding a hearing on Mr. Hall's claim: a state court ordered the proceeds from the sale of the seized crab returned to Mr. Hall; the court stated that Mr. Hall, and the others cited, had not engaged in any illegal fishing, namely fishing after the closure, which supports Mr. Hall's contention that the F/V [LADY] BLACKIE required more than 24 hours to reach King Cove; the State allowed all vessels an additional 5 hours – over 24 hours – to reach King Cove; after this incident, the State of Alaska changed the regulation to allow vessel operators to request an additional amount of reasonable time – over 24 hours – to reach King Cove from the Pribilofs, but only King Cove, not Dutch Harbor or Akutan. [footnotes omitted]

²³ IAD at 1.

²⁴ Judgment (Aug. 8, 1996). Mr. Hall and Mr. Herzog both submitted it with their applications.

- (2) if delivery is made to Dutch Harbor, Akutan, or King Cove from ...
- (B) the Pribilof District Area of Q, after 24 hours following the closure; . . .²⁵

In 1995, the Pribilof king crab fishery was open from 12:00 p.m., noon, September 15, to 12:00 p.m., noon, September 22, 1995. The F/V LADY BLACKIE delivered its crab to King Cove at 11:52 p.m., on September 23, approximately twelve hours *after* the fishery had been closed for twenty-four hours.²⁶ Of the fifteen vessels that arrived at King Cove after the closure of the Pribilof king crab fishery, thirteen vessels arrived more than twenty-four hours after the closure.²⁷ The State took the following actions:

- 2 vessels arrived within 24 hours
- 2 vessels arrived within a 5 hour grace period allowed by the State
- 7 vessels delivered after the grace period, were cited and their crab was seized
- 3 vessels delivered after the grace period, were cited, and their crab was not seized
- 1 vessel delivered after the grace period, was not cited, and its crab was not seized
- Total 15 vessels²⁸

The F/V LADY BLACKIE was one of the seven vessels that delivered to King Cove after the five-hour grace period, was cited for violating 5 AAC 34.035, and had its crab seized. The pleadings in the State proceeding agree that a heated exchange between an ADFG representative and a fisherman preceded the citations and the seizures. Clyde Sterling of Peter Pan Seafoods stated that “a fisherman cursed at a Fish and Game representative over the radio. I was physically present at the cannery at the time and overheard the radio conversations.”²⁹ The State of Alaska and the vessel operators disagreed over whether the State issued the citations and seized the crab *because* of the exchange.³⁰

In November 1995, the vessel operators moved to dismiss the action alleging that the State

²⁵ Alaska Administrative Code, Register 132 (January 1995). It has since been changed to allow 30 hours presumptive delivery time to King Cove and to allow a vessel operator to request an extension. *See* pages 15 - 16 *infra*.

²⁶ Vessel Logbook, Exhibit B-17.

²⁷ State of Alaska’s Motion Opposing Defendant’s Motion to Dismiss Based on Selective Enforcement at 4 (Apr. 2, 1996) [Exhibit A-149]. The State’s pleading said that at least two vessels arrived within the 24-hour period, so it is possible that it was 2 or 3 vessels. The record contains no information about those vessels that arrived within the 24-hour delivery period including, most importantly, the characteristics of the vessels and the time they left the Pribilof fishing grounds.

²⁸ *Id.*

²⁹ Affidavit of Clyde Sterling (Apr. 17, 2006).

³⁰ “Although it is clear a number of radio discussions including one that ended in argument are what gave rise to the enforcement action, there is no evidence to suggest that the enforcement was in retaliation for the argument.” State’s Motion Opposing Defendant’s Motion to Dismiss Based on Selective Enforcement (Apr. 2, 1996)[Ex. A-149].

regulation was void for vagueness because it did not define the term “delivery.”³¹ In December 1995 and January 1995, the court held an evidentiary hearing.³² In March 1996, based on a stipulation of the parties, the court ordered the State to give Mr. Hall 2/3 of the funds from the seizure of the crab, which was \$65,353.84.³³ In March 1996, the vessel operators moved to dismiss based on a theory of selective enforcement, arguing that the State issued the citations due to the argument between the ADFG representative and a vessel operator.³⁴

The State court did not dismiss the complaint based on either theory – void-for-vagueness or selective enforcement – but made the following statements concerning the seizure and whether the vessel operators had engaged in illegal fishing:

The decision to seize the funds totaling \$435,000 was arbitrary and punitive in the extreme. I have discussed this, as I have indicated, with a number of judicial colleagues, specially former prosecutors and the Department of Law types, and the immediate and unanimous response has been by everybody I’ve talked to that the forfeiture under the circumstances of these cases, simply put, shocks the conscience. The law enforcement [officers] at the time knew, or should have known, that forfeiture, which by the State’s own argument during the motion hearings could have occurred anytime later, could and would have had serious and potentially devastating ramifications for all of the individuals involved. They [the defendants] have boat payments to make, they have crew shares to pay, some of which were paid out of loans they had to take out and are still fighting and struggling with, impacts upon families involved, business obligations with the canneries, and other people, and I recognize although the court cannot make a declaratory judgment regarding sentencing, it appears clear that enforcing the penalty regarding any forfeiture under these circumstances here were [sic] (1) there was an honest disagreement regarding the regulatory provision and (2) *absolutely no alleged or suspected illegal fishing, and that was made clear by all the State’s witnesses*, that the enforcement of the penalty of forfeiture would constitute, it seems to me, an abuse of discretion.

I would also comment that three colleagues, in three separate conversations regarding this case, independently suggested that I consider a [Criminal Rule] 43(c) dismissal. There is virtually no law in that regard, and it was not briefed and I am unable to find authority for dismissal under 43(c), but I would point out for the parties’ benefit that that’s the kind of response that I have had regarding this – these cases.

³¹ Ex. A-64 to A-77.

³² Ex. A-3 to A-50, Log notes for hearing on December 5, 6, 12, 1995 and January 9, 10, 1996.

³³ Order (District Court for the State of Alaska, Third Judicial District at Sand Point), Case No. 3SP-95-149 CR (Mar. 14, 1996) [Exhibit A-130 to A-131].

³⁴ Ex. A-132 to A-143.

I'd also point out that in light of the fact that there was *no alleged or suspected illegal fishing*, and in light of the fact that there has been a change in the regulation demonstrates that the forfeiture provision and the prosecution costs and the time involved here would be significantly disproportionate to any harm caused. I think the only harm caused was going to be a technical violation of the regulation which is not now in existence any longer in that form.³⁵

In response to the court's comments, the defendants moved to dismiss based on Alaska Criminal Rule 43(c), which allows a dismissal in the interests of justice. Before the court ruled on that motion, or held a hearing on the charges, the State and Mr. Hall reached an agreement that Mr. Hall would plead no contest to a charge of violating 15 AAC 34.05(h)(2)(E), pay a fine of \$500 and the State would pay Donald Hall the remaining 1/3 of the funds, or \$32,676.91, that the State seized.³⁶ The State and Mr. Hall took these actions.³⁷

Although Mr. Hall pled no contest to violating the State regulation, I conclude that Mr. Hall's plea should not prevent, or "estop," him from arguing that he did not violate the State regulation [15 AAC 34.05(h)(2)(E)] because he had an inadequate incentive to litigate the issue: the fine of \$500 was a relatively small amount, particularly compared to the cost of further litigation; Mr. Hall received all the funds that were seized, totaling \$98,030.75; and the State of Alaska was changing the regulation to allow a vessel operator to request a radio extension of the 24-hour delivery period.³⁸ I rely on the principle that a party should not be prevented, or "estopped," from litigating a question in a subsequent proceeding if the party did not have an adequate incentive to litigate the question in the prior proceeding.³⁹

C. Facts.

At the hearing on March 10, 2010, Donald Hall, Leonard Herzog and Joseph Hogan testified.⁴⁰

³⁵ Defendants Memorandum in Support of Motion to Dismiss, *State of Alaska v. Koso et al*, Cases No. 3SP95 - 145 - 3SP-95-154 (June 6, 1996), *quoting* District Court Judge Michael Wolverton statements on April 4, 1996 (emphasis added) [Ex. A-160 to -161].

³⁶ Herzog Supplemental Brief at 4 (June 13, 2006).

³⁷ Judgment (Mr. Hall's plea of no contest) (Aug. 8, 1996) [Exhibit A-182]; Order (District Court for the State of Alaska, Third Judicial District at Sand Point), Case No. 3SP-95-149 CR (Aug. 12, 1996) [Exhibit A-180 to A-181]. The State was to make the check payable to Mr. Hall with Peter Pan Seafoods as co-payee.

³⁸ *See* pages 15 - 16 *infra*.

³⁹ *See, e.g., Haring v. Prorise*, 462 U.S. 306, 311 (1983); *Maciel v. Commissioner of Internal Revenue*, 489 F. 3d 1018, 1024 (9th Cir. 2007); *American Casualty Company v. United Southern Bank*, 950 F.2d 250, 254 (5th Cir. 1992). If a party had an incentive to litigate, the party may be prevented from relitigating the issue under a theory of "estoppel."

⁴⁰ Donald Hall [Tape 1, 42 - 68 minutes; Tape 2, beginning - 10 minutes]; Leonard Herzog [Tape 1, 3 - 40 minutes]; Joseph Hogan [Tape 3, beginning - 10 minutes].

Mr. Herzog had also submitted an affidavit from Clyde Sterling, who was Vice President of Peter Pan Seafoods in 1995, and present at the King Cove plant, in September 1995.

Before turning to the facts, I will describe the background of the witnesses. Donald Hall has been engaged in commercial fishing since 1980. From 1980 to 2005, he fished commercially in the Bering Sea. From 1990 to 2001, he was part owner, and full-time operator, of the F/V LADY BLACKIE, often living on the boat.⁴¹ It was a 90-foot, shallow draft, narrow vessel, originally built as an oil platform utility boat in the Gulf of Mexico.⁴² It sank in 2007, with no loss of life.⁴³ Mr. Hall also oversaw maintenance of the vessel. Mr. Hall testified that he kept the vessel's logbook contemporaneously with the events he recorded in the logbook. As noted, the logbook was extraordinarily neat, detailed and meticulous. I find that the logbook, which is Exhibit B, accurately states the events it describes.

For the hearing, Mr. Hall testified from a hospital in Oregon, where he had recently had heart surgery. He was about to be discharged and he stated unequivocally that he was able to testify. His testimony did not seem impaired.

Leonard Herzog did not own the F/V LADY BLACKIE during the events in question. He owned the vessel from 2003 to 2007. He has owned and managed vessels that fish commercially in Alaska since 1994. He currently owns and manages the F/V TEMPO SEA, which is similar to the F/V LADY BLACKIE, in that it is a shallow draft vessel that fishes for crab in the Bering Sea and delivers to the Peter Pan plant in King Cove, Alaska.

Joseph Hogan has worked for Peter Pan Seafoods in Alaska for 30 years and has been at the King Cove plant since 2002. Mr. Hogan is Assistant Plant Manager and his duties include managing the fleet and overseeing their schedule of deliveries to the plant.

I found each of the witnesses experienced and knowledgeable about commercial fishing in Alaska, the characteristics of the F/V LADY BLACKIE or vessels similar to the F/V LADY BLACKIE, and the transit time from the Pribilof Islands to the Peter Pan plant in King Cove, Alaska. The following facts are based on their testimony and other evidence in the record.

The Pribilof king crab fishery was open from September 15 - 22, 1995. The F/V LADY BLACKIE left for the Pribilof fishing district from King Cove on September 12, 1995. [Ex. B-1] The F/V LADY BLACKIE started fishing at 12:00 a.m., September 15, 1995, when the Pribilof king crab fishery opened. Mr. Hall's logbook for September 15, 1995 states: "12:01 Were [We're] setting our Pots the season just opened for Pribilof King Crab."⁴⁴ The F/V LADY

⁴¹ He owned a part interest in the F/V LADY BLACKIE until 2003.

⁴² Vessel Survey, Exhibit D-2; testimony of Donald Hall [Tape 2, 5 minutes].

⁴³ Press Release, United States Coast Guard (Nov. 26, 2007) [Exhibit 2 to Order Consolidating Appeals, Granting Hearing and Adding Documents to the Record (Feb. 17, 2010)]

⁴⁴ Vessel Logbook, Exhibit B-5.

BLACKIE fished off the northeast corner of St. Paul Island.

The F/V LADY BLACKIE stopped fishing at 9:48 a.m., on September 22, 1995, two hours before the fishery closed. Mr. Hall's logbook states for September 22, 1995: "09:48 #7 is stacked onboard. 20 pots for 150 Crab. Were [We're] finished fishing and heading toward King Cove. The pribilof King Crab season closes in Two hours." [Ex. B-15].

The F/V LADY BLACKIE headed straight for King Cove when it stopped fishing. In addition to any regulatory reasons for wanting to get to King Cove as soon as possible, Mr. Hall had a strong business reason as well. Mr. Hall explained: "Well, because crab die the longer you hold them, they'll start dying off. So you want to get offloaded as fast as possible." [Tape 2, 9 minutes]

The F/V LADY BLACKIE took the shortest possible route to King Cove, choosing the route through False Pass, rather than Unimak pass. The distance between St. Paul Island and King Cove, using the False Pass route, was 310 nautical miles.⁴⁵ The F/V LADY BLACKIE reached King Cove at 23:52, or 11:52 p.m., September 23, 1995. This translates into a trip time of 38 hours, 4 minutes, and a speed of 8.55 knots per hour.

To reach King Cove in 24 hours, the F/V LADY BLACKIE would have had to travel an average speed of 12.5 knots or nautical miles per hour for 24 hours laden with approximately 33,000 pounds of crab. The basis for that calculation: 310 nautical miles ÷ 24 hours = 12.5 nautical miles per hour.

It was not possible for the F/V LADY BLACKIE to sustain a speed of 12.5 knots per hour for 24 hours. Therefore it was not possible for the F/V LADY BLACK to reach King Cove within 24 hours. Since this is the key factual finding, I describe the evidence that is the basis for this finding.

D. It was not possible for the F/V LADY BLACKIE to reach King Cove within 24 hours after the closure of the Pribilof Island king crab fishery on September 22, 1995.

The evidence that it was possible for the F/V LADY BLACKIE to have reached King Cove within 24 hours after the closure of the fishery is that Mr. Hall pled no contest to the charge of violating 5 AAC 34.035(h)(2)(B) and paid a fine of \$500. Although I concluded that Mr. Hall's plea does not prevent him from arguing that he did not violate 5 AAC 34.035(h)(2)(B),⁴⁶ his plea is still some evidence that he did violate the regulation.

The strength of this evidence is weakened by the following facts. The State of Alaska District Court did not rule on whether it was possible for Mr. Hall to have delivered crab to King Cove

⁴⁵ [Ex. C - 1, C - 2, C - 4, C - 5] Nautical miles or knots are 6076 feet to a mile, rounded to the nearest foot. Regular miles are 5280 feet. Webster's Third International Dictionary (1986).

⁴⁶ See page 8 *supra*.

within 24 hours after the closure of the Pribilof blue king crab fishery. It simply accepted Mr. Hall's plea. Mr. Hall had no incentive to litigate a \$500 fine, since he had received all the funds that were seized, totaling \$98,030.75, and the State of Alaska was changing the regulation to allow a vessel operator to request an extension of the 24-hour delivery period to King Cove.⁴⁷

Further, Mr. Hall's no contest plea is clearly outweighed by the evidence in the record that it was not possible for the Mr. Hall to have reached King Cove with the F/V LADY BLACKIE within 24 hours after the closure of the Pribilof king crab fishery.

The evidence consists of the following: [1] the testimony of Leonard Herzog, [2] the testimony of Donald Hall, [3] the testimony of Joseph Hogan, [4] the affidavit of Clyde Sterling, [5] the speed of the boat going to the Pribilofs from King Cove, [6] the existence of a strong business reason for Mr. Hall to reach King Cove as quickly as possible, [7] the State court's conclusion that there was no illegal fishing, [8] the State's failure to enforce the 24-hour requirement on any vessel for that opening, [9] the State's changing the regulation in 1996, immediately after the incident where Mr. Hall and the other vessel operators were cited, to allow vessels to request more than 24 hours to reach King Cove from the Pribilofs.

The testimony of Mr. Hall, Mr. Herzog and Mr. Hogan was detailed and consistent that it was not possible for the F/V LADY BLACKIE to sustain a speed of 10 nautical miles per hour, much less 12.5. The testimony centered around the vessel's cruising speed, which is a speed that the vessel can safely and continuously maintain, and the vessel's maximum speed, which is the speed a vessel could safely maintain for shorter periods of time, such as in an emergency; and the actual speeds of the F/V LADY BLACKIE while Mr. Hall operated it and while Mr. Herzog owned it.

[1] Testimony of Leonard Herzog

Leonard Herzog testified that he believed the boat's cruising speed was 8.5 and that its maximum speed would have been 10 knots per hour, although he never remembered it going that speed. He testified that the time he allowed the F/V LADY BLACKIE to reach the Peter Pan plant in King Cove from the Pribilofs was 36 hours in good weather and more in bad weather. This is the time that he allows for his current vessel, the F/V TEMPO SEA, to reach King Cove from the Pribilofs.

[2] Testimony of Donald Hall

Donald Hall testified:

Question from Administrative Judge: Could you operate the vessel at 10 knots for more than an hour?

⁴⁷ See pages 15 - 16 *infra*.

Answer: I wouldn't do it.⁴⁸

* * * *

Question: And the boat would have had to go, would have had to average close to 13 knots per hour. Do you think that's possible?

Answer: No. It never It's a displacement hull. They are made to carry lots of weight, whereas the other type hulls are schooner hulls, built more for speed. And it is considered a workboat, a lot of scows work with that hull design.

Question: What is the maximum speed?

Answer: I don't think it would ever be over 9.5. I know that boat better than anybody. I mean I lived on it for 11 years. So it basically was my home. I could lay in my bunk and tell you which tanks were full and empty.

Question: So when you were captaining it, what is the fastest you ever took it out?

Answer: As far as running without riding through a tide through a pass or something, maybe 9 knots.

. . . .

Question: What, in your opinion, would be the effect on safety for the boat if you had tried to go 13, 12.5 knots?

Answer: (indecipherable) If going through False Pass, lost an engine. We could end up on the sand bar and lose the boat, the crew, everything.

Question: What if you were in the open seas?

Answer: They're running it that hard, if you blow the transmission up or something. You're down to one and then you're limping. You lose your second engine and you're dead.

Question: What do you think would have happened if you tried to take the boat at 12 ½ knots per hour?

Answer: It couldn't do 12 ½ knots per hour. The harder I pushed it, the more of a chance I'd have of blowing it up and damaging the boat. I mean that all sorts of things could

⁴⁸ Tape 1, 59 minutes.

happen, (indecipherable), blow the engine up, blowing oil over the engine room and catch fire that way too.

Question: When you were captain of the Lady Blackie, what is the fastest you believe you ever took the boat?

Answer: I think 9 ½ knots, 9 ½ knots is what I remember. [Tape 1, 64 minutes]

I note a discrepancy between Mr. Hall testifying that the maximum speed he remembered taking the vessel was 9 knots in one part of his testimony and 9.5 in his later testimony. I do not find this a material discrepancy. He consistently testified that the vessel's cruising speed was 8.5 knots and he could not have made it to King Cove within 24 hours. This was consistent with his sworn affidavit⁴⁹ and his testimony in the State proceedings.⁵⁰ He consistently testified that he did not take it faster than 9.5, which is considerably less than the 12.5 knots the boat would have had to *average* to reach King Cove in 24 hours. I find that Mr. Hall did not operate the vessel under its own speed – as opposed to a speed due to a temporary fast current or wind – faster than 9.5 nautical miles per hour.

[3] Testimony of Joseph Hogan

Joseph Hogan, Assistant Plant Manager at the Peter Pan King Cove plant, had a slightly different take on the situation. He testified that, over 30 years, he had taken hundreds of trips on vessels built like the F/V LADY BLACKIE. He agreed that the F/V LADY BLACKIE could not go anywhere close to 12.5 knots per hour but he did not think the engine would blow up. He testified that it simply would not go that fast:

Question from Administrative Judge: What do you think would be the effect of trying to go 12 knots per hour?

Answer: I don't think the hull speed would allow it to go 12. It doesn't have the engine power or the hull configuration that would even allow it to do that.

Question: And if someone tried, what do you think would happen?

⁴⁹ Affidavit of Donald Hall (Apr. 15, 2006) (“[I]t takes more than 24 hours to transit from the fishery area to King Cove. It is 285 nautical miles from the St. George harbor in the Pribilof dishing district to King Cove. The Lady Blackie's cruising speed is 8.5 knots, which results in a minimum transit time of approximately 33 hours. This is similar to other crab vessels, whose speed range from 8.5 knots to 10 knots. A faster crab vessel traveling at 10 knots would still take at least 28 hours. Obviously, it is not possible for [a] vessel fishing out of King Cove to transit from St. George to King Cove within the allotted 24 hours.” The vessel was at St. Paul, which is farther than St. George.

⁵⁰ Log Notes (Dec. 5, 1995) (Testimony of Donald Hall – “impossible to make trip in 24 hrs”)[Ex. A-8].

Answer: Well, you get to a certain point the rpm's on the engine, and the size of the shaft and the props and things like that, they just won't go any further so you're just beating your head against there running it at a higher rpm to try to go faster, just won't do it, won't go past the hull speed. And eventually you just , I don't think you blow an engine up, you just try to dig a hole with a...you're spinning your wheels like our spinning your car tires.
[Tape 3. 7 minutes]

When his plant schedules deliveries for vessels coming from the Pribilofs, he allows 36 to 48 hours, depending on the weather.

[4] Affidavit of Clyde Sterling

Clyde Sterling, former (retired) Vice President of Peter Pan, stated that “it takes more than 24 hours to transit from the fishery area [in the Pribilofs] to King Cove.”⁵¹

[5] Vessel's speed going to Pribilof District from King Cove

According to the vessel's logbook, the vessel took 35 hours, 39 minutes to reach the Pribilof District for a tank check after leaving King Cove. The vessel did not have any crab on board when it left King Cove and this speed is comparable to the vessel's time of 38 hours returning to King Cove.

[6] Business reason for going as fast as safely possible

Apart from any regulatory reason for wanting to get back to King Cove as quickly as possible, I have noted that Mr. Hall had a business reason for wanting to get the vessel back to the plant quickly: “Well, because crab die the longer you hold them, they'll start dying off. So you want to get offloaded as fast as possible.”⁵²

Another way of looking at this is that everyone involved had an incentive to have the vessel's cruising speed as close as possible to the maximum speed. The testimony was that the vessel's cruising speed of 8.5 knots was fairly close to the vessel's maximum speed of 9.5 to 10 knots per hour. Mr. Herzog offered a convincing explanation:

When we determine cruising speed for the boat, we try to make it the optimum speed because we want to get where we're going, that is safe for the vessel. So it's usually the speed we can maintain without the vessel overheating or getting damaged.⁵³

I also note that the vessel took the shorter False Pass route, even though it is narrower and a little

⁵¹ Affidavit of Clyde Sterling at ¶ 4 (Apr. 17, 2006)

⁵² Tape 2, 9 minutes.

⁵³ Tape 2, 39 minutes.

more difficult to navigate, over the longer Unimak Pass route.

[7] The seized crab did not result from illegal fishing – fishing after the closure of the Pribilof Island king crab fishery.

As noted, Mr. Hall’s logbook strongly supports this finding, contemporaneously documenting that he stopped fishing at 9:48 a.m., and noting that time was two hours before the fishery was closing. [Ex. B-15] And the District Court of the State of Alaska stated that there was “absolutely no alleged or suspected illegal fishing, and that was made clear by all the State’s witnesses” and referred to “the fact that there was no alleged or suspected illegal fishing.”⁵⁴

This fact supports Mr. Hall’s testimony that the additional time it took him to reach King Cove was necessary time spent in transit, not time spent getting a competitive advantage by illegally fishing after the closure. This is important since the evident purpose of the State regulation [15 AAC 34.05(h)(2)(E)] is to prevent fishing after the closure of the fishery.

[8] The State did not enforce the 24 hour delivery requirement on any vessel.

The State of Alaska did not enforce the 24-hour delivery requirement in 15 AAC 34.05(h)(2)(E) on any vessel in 1995.⁵⁵ The State allowed an additional 5 hours for all the vessels to reach King Cove from the Pribilofs. This supports Mr. Hall’s contention that he could not have delivered the crab to King Cove within 24 hours.⁵⁶

[9] After this incident, the State of Alaska changed the regulation to allow vessel operators to request additional time – over 24 hours – to deliver crab to King Cove from the Pribilofs.

From at least 1985 to 1988, the State regulation allowed vessel operators to request more than 24 hours to reach King Cove from the Pribilofs.⁵⁷ The State changed the regulation in 1988, without allowing additional time to deliver to King Cove from the Pribilofs.⁵⁸ The Pribilof king crab fishery in September was closed from 1988 to 1992,⁵⁹ so the effect of this omission would have

⁵⁴ I quote the court’s remarks in full at page 7 - 8 *supra*.

⁵⁵ *See* page 6 *supra*.

⁵⁶ I do not make a finding whether Mr. Hall could have delivered the crab within 29 hours, although there is considerable evidence that he could not, because the definition of legal landing is a landing in compliance with the regulation in effect at the time and the regulation in effect at the time required delivery within 24 hours.

⁵⁷ 5 AAC 34.035(e)(3) [Register 95, effective 7/14/85]. The regulation was not specific to King Cove but simply allowed vessel operators to request an extension beyond 24 hours.

⁵⁸ 5 AAC 34.035(h)(2) [Register 107, effective 7/23/88]. It did allow additional time for delivery east of King Cove.

⁵⁹ Bowers, F. R., M. Schwenzfeier, S. Coleman, B. J. Failor-Rounds, K. Milani, K. Herring, M. Salmon, and M. Albert. 2008. Annual management report for the commercial and subsistence shellfish

gone unnoticed. It reopened in 1993 and 1994,⁶⁰ but vessels delivering to King Cove after the 24-hour period were not cited,⁶¹ so again the effect of the regulatory change on vessels delivering to King Cove would have gone unnoticed. This incident occurred in 1995, which brought the problem to the attention of the authorities and, in 1996, the State changed the regulation to again allow vessel operators to request time, beyond 24 hours, to reach King Cove from the Pribilof District.⁶² The *only* destination added in 1996 as a candidate for additional time was King Cove.⁶³

fisheries of the Aleutian Islands, Bering Sea and the Westward Region's Shellfish Observer Program, 2006 at 122. Alaska Department of Fish and Game, Fishery Management Report No. 08-02, Anchorage, available at <http://www.sf.adfg.state.ak.us/FedAidPDFs/fmr08-02.pdf>.

⁶⁰ *Id.*

⁶¹ Affidavit of Donald Hall (Apr. 15, 2006) at ¶ 6; Affidavit of Clyde Sterling (Apr. 17, 2006) at ¶¶ 4 - 6; State's Motion Opposing Defendant's Motion to Dismiss Based on Selective Enforcement (Apr. 2, 1996) ("It does not matter that the regulation was not enforced at King Cove previously.") [Ex. A-152]

⁶² The State changed the location of the regulation to 5 AAC 34.941, Landing Requirements for Registration Area Q. The regulation went into effect in 1996 and provided:

(a) Notwithstanding 5 AAC 34.031(e), following the closure of any district in Registration Area Q to the taking of a specified species of king crab, a vessel validly registered for that district may not have that species of king crab on board the vessel in waters subject to the jurisdiction of the state, if delivery is made

(1) in the district or registration area in which the king crab were taken, after 24 hours following the closure;

(2) to Dutch Harbor, Akutan, or King Cove from the

(A) Pribilof District of Registration Area Q, after 24 hours following the closure, *except that a vessel delivering to King Cove may request additional time to deliver crab under (b) of this section;*

(B) Northern District of Registration Area Q in the

(i) Norton Sound, after the time specified at check out with a representative of the department in Nome;

(ii) Saint Matthew Island Section, after 72 hours following the closure;

(iii) Saint Lawrence Island Section, after 72 hours following the closure.

(b) If a vessel is delivering crab to a location east of King Cove, *or if the vessel owner, or the owner's agent, wishes to request additional time to deliver king crab to King Cove under (a)(2)(A) of this section,* the

(1) vessel owner, or the owner's agent, shall contact, by radio or telephone, a representative of the department in Dutch Harbor within 24 hours following the closure;

(2) representative of the department in Dutch Harbor shall grant a reasonable amount of additional time for the vessel to reach the port of delivery; the amount of additional time shall be determined under the assumption that the vessel departed the fishing grounds immediately following the closure and proceeded directly to the processing location. [emphasis added]

⁶³ 5 AAC 34.941 was amended in 2002 to allow 30 hours for the presumptive delivery time from the Pribilofs to King Cove, Dutch Harbor and Akutan, but only additional time, over 30 hours, for delivery to King Cove. [Am. 8/24/2002, Register 163]. Mr. Herzog states that he was present at the hearings on this regulation and the Coast Guard supported it for safety reasons. Affidavit of Leonard

For deliveries to Dutch Harbor and Akutan, the regulation preserved a flat, no-exception, 24-hour requirement.⁶⁴

The history of this regulation supports the testimony of Messrs. Hall, Herzog and Hogan, that the F/V LADY BLACKIE required more than 24 hours to reach King Cove. Based on the record in this appeal, the year 1995, and this incident, was the first, and only, time that the State cited vessel operators for delivering crab to King Cove more than 24 hours after the closure of a crab fishery, when there was no dispute that the vessel operators had stopped when the fishery closed.

In sum, the evidence presented by Mr. Hall and Mr. Herzog clearly establishes that it was physically not possible for the F/V LADY BLACKIE to reach King Cove within 24 hours after the closure of the Pribilof king crab fishery on September 22, 1995. The strongest evidence was Mr. Hall's testimony that he never ran the vessel faster than 9.5 knots; Mr. Herzog's testimony that, although the vessel could travel 10 knots, he did not know of any trip when it went that fast; the vessel's actual transit time to the Pribilofs [35 hours, 34 minutes] and back from the Pribilofs [38 hours, 5 minutes] at a cruising speed of 8.5 knots per hour; consistent testimony from persons with knowledge of the vessel's cruising and maximum speed that the vessel could not have traveled an average speed of 12.5 knots per hour for 24 hours with 33,000 pounds of crab; and the fact that Mr. Hall had a strong business incentive to reach King Cove as quickly as possible, consistent with the safety of his vessel and crew.

E. Conclusion.

Based on the above, I conclude that Donald Hall has shown that he did not violate 15 AAC 34.05(h)(2)(E) because it was not possible for the F/V LADY BLACKIE to reach King Cove within 24 hours after the closure of the crab fishery in the Pribilof Island in September 1995. I therefore conclude that the crab landed by the F/V LADY BLACKIE in September 1995 should be treated as a legal landing within 50 C.F.R. § 680.40(b)(4)(ii) for purposes of calculating Mr. Hall's captain/crew Quota Share, and for purposes of calculating Mr. Herzog's owner Quota Share, under the Crab Rationalization Program.

In light of this conclusion, I do not address two additional arguments. First, the appellants argued that 15 AAC 34.05(h)(2)(E) was not a landing regulation.⁶⁵ The definition of legal landing for the CRP does not state that a landing must comply with all regulations but with all "state and Federal *permitting, landing, and reporting* regulations in effect at the time of the landing."⁶⁶ Mr. Herzog states that the 24-hour delivery requirement is not a "permitting" or "reporting" regulation, a

Herzog at ¶ 10 (Apr. 15, 2006).

⁶⁴ As noted, in 2002, the presumptive time limit was increased to 30 hours.

⁶⁵ Herzog Supplemental Brief at 11 - 12 (June 13, 2006).

⁶⁶ 50 C.F.R. § 680.40(b)(4)(ii) (emphasis added). Cf. 50 C.F.R. § 679.2 (definition of "legal landing" for part 679 in effect prior to CRP) ("legal landing means a landing in compliance with Federal and state commercial fishing regulations in effect at the time of landing).

proposition with which I agree, but he states that it is not a landing regulation either, a proposition which I do not decide.

Mr. Herzog cites the definition of “landing” as “offloading fish.”⁶⁷ He is correct that the regulation does not contain the word “landing.” The regulation penalizes a vessel operator for having crab caught in a Pribilof opening on board his or her vessel, when the vessel arrives in King Cove, if the vessel delivers the crab more than 24 hours after the Pribilof crab fishery closed. The regulation penalizes “delivery.”⁶⁸ In *Leonard Leach*, an appeal under the IFQ sablefish and halibut program, NMFS found that a vessel operator had not landed halibut because he had only arrived in port, or delivered the fish to port, before his vessel sank and he had not offloaded it.⁶⁹

Although the State regulation penalizes the delivery, not the landing, of crab, the State regulation does not define delivery and so I would look to a standard definition of “deliver,” which is “give, transfer: yield possession or control of: make or hand over: make delivery of.”⁷⁰ By penalizing “delivery,” the argument would be that the regulation penalizes “landing.” *Leach* is arguably distinguishable because the Regional Administrator’s concurrence with the appellate officer’s decision was based on the appellant’s lack of contemporaneously-submitted fish ticket.⁷¹ Here, Mr. Hall submitted a fish ticket contemporaneously with the landing.

I do not decide whether 15 AAC 34.05(h)(2)(E) is a landing regulation because, assuming it is a landing regulation, Mr. Hall did not violate it.

Second, Mr. Herzog argued that RAM’s construction of the Official CRP Record violates equal protection because landings that result in citations, but not confiscations, are credited in the Official Record.⁷² Since I have found that the September 1995 landing of Pribilof king crab should be included in the Official Crab Rationalization Record, I do not address that argument.

⁶⁷ Herzog Supplemental Brief at 12, *citing* 50 C.F.R. § 679.2 (“Landing means offloading fish). For catcher vessels under the CRP, “landing” constitutes “the amount of crab removed from the boat at a single location/time.” 50 C.F.R. § 680.2.

⁶⁸ State’s Opposition to Motion to Dismiss Misdemeanor Complaint and Return of Funds (Dec. 4, 1995) at 4 - 5 [Ex. A-83 to A-84].

⁶⁹ *Leonard Leach*, Appeal No. 95-0115 (May 6, 1998). This decision, and all prior decisions of the Office of Administrative Appeals, are available on NMFS Alaska Region website: <http://www.fakr.gov/index/decisionsbynumber.asp>.

⁷⁰ Webster’s Third International Dictionary (1986). This was the second definition. The first definition was biblical in tone: “set free from restraint: set at liberty.”

⁷¹ Regional Administrator’s Decision on Review, *Leonard Leach*, Appeal No. 95-0115 (Aug. 31, 1998), available at <http://www.fakr.noaa.gov/appeals/leach.pdf>.

⁷² Herzog Supplemental Brief at 4 - 11 (June 13, 2006). Although the notation on State of Alaska fish tickets is one way that RAM determined whether to include a landing in the Official Crab Rationalization Record, I did not examine whether RAM used other methods and, if so, what they were.

FINDINGS OF FACT

1. Donald Hall delivered Pribilof king crab from the F/V LADY BLACKIE to King Cove, Alaska, on September 23, 1995, more than 24 hours after the closure of the Pribilof king crab fishery on September 22, 1995.
2. The Vessel Logbook, Exhibit B, accurately states the events it describes.
3. The crab landed on fish ticket C94 019175 was not the result of fishing after the closure of the Pribilof king crab fishery on September 22, 1995.
4. The crab landed on fish ticket C94 019175 was not the result of illegal fishing.
5. The distance from where the F/V LADY BLACKIE was fishing at St. Paul Island to King Cove was 310 nautical miles.
6. To reach King Cove within 24 hours, the F/V LADY BLACKIE would have had to average 12.5 knots per hour.
7. From 1980 to 1991, Donald Hall operated the F/V LADY BLACKIE and did not operate the vessel, under its own power, at a speed faster than 9.5 knots per hour.
8. It was not possible for Donald Hall to have delivered the crab that was recorded on fish ticket C94 019175, with the F/V LADY BLACKIE, to King Cove, Alaska, within 24 hours after the closure of the Pribilof king crab fishery at 12:00 p.m., September 22, 1995.

CONCLUSIONS OF LAW

1. The requirement in 50 C.F.R. § 680.40(b)(4)(ii) that a legal landing is a landing in compliance with a state regulation means that the landing did not violate a state regulation.
2. Donald Hall did not violate 5 AAC 34.035(h)(2)(B) if it was not possible for him to deliver the crab recorded on fish ticket C94 019175, with the F/V LADY BLACKIE, to King Cove, Alaska, within 24 hours after the closure of the Pribilof crab fishery at 12:00 p.m., September 22, 1995.
3. Donald Hall's no contest plea did not prevent, or estop, him from arguing that he did not violate 5 AAC 34.035(h)(2)(B) because he did not have an incentive to litigate the charge.
4. It was not possible for Donald Hall to have reached King Cove from the Pribilof Island with the F/V LADY BLACKIE within 24 hours after the closure of the Pribilof red king crab fishery on September 22, 1995.
5. Donald Hall did not violate 5 AAC 34.035(h)(2)(B).

6. The landing of Pribilof red and blue king crab recorded on Fish Ticket C94 019175 is a legal landing within the definition of 50 C.F.R. § 680.40(b)(4)(ii).
7. The landing of Pribilof red and blue crab recorded on Fish Ticket C94 019175 is a legal landing for purposes of the Crab Rationalization Program.
8. Mr. Hall qualifies for additional captain/crew QS in the Pribilof red and blue king crab fishery based on the landing of crab reported on fish ticket C94 019175.
9. Mr. Herzog qualifies for additional catcher vessel owner QS in the Pribilof red and blue king crab fishery based on the landing of crab reported on fish ticket C94 019175.

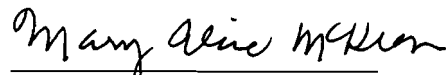
DISPOSITION AND ORDER

The IAD issued to Donald Hall, dated December 23, 2005, that is the subject of this appeal is VACATED. RAM is directed to correct the Official Crab Rationalization Record to include the landings made by the F/V LADY BLACKIE on fish ticket C94 019175, and to recalculate Mr. Hall's captain/crew QS on that basis.

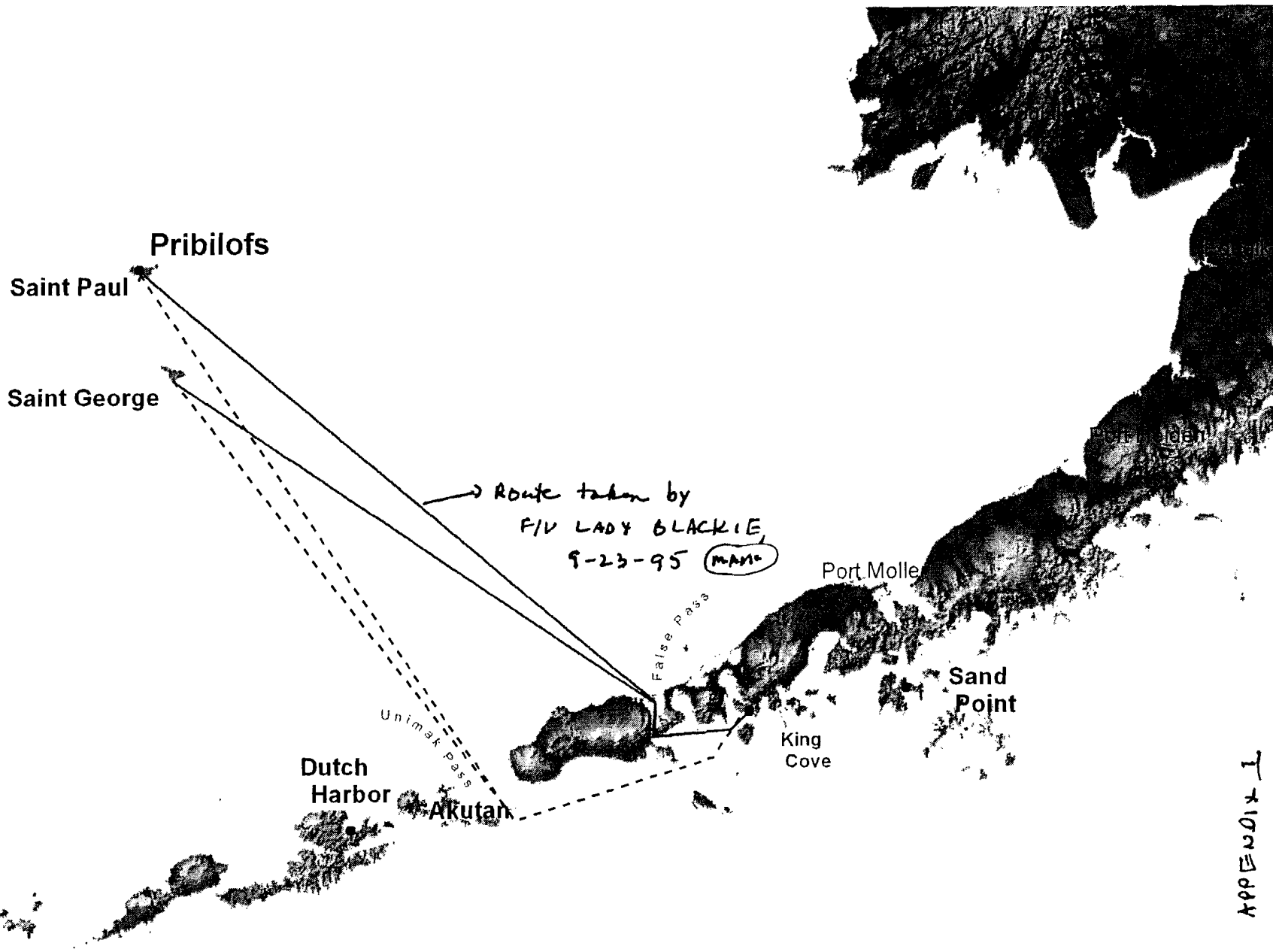
The IAD issued to Leonard Herzog, dated February 17, 2006, that is the subject of this appeal, is VACATED. RAM is directed to correct the Official Crab Rationalization Record to include the landings made by the F/V LADY BLACKIE on September 24, 1995, and to recalculate Mr. Herzog's catcher vessel owner QS on that basis.

This Decision takes effect April 22, 2010, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. § 679.43(o).

Mr. Herzog, Mr. Hall 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 April 2, 2010, the tenth day after this Decision. 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



APPENDIX I