

SUMMARY

The IAD is affirmed. Mr. Lovejoy does not qualify for an LLP groundfish license with an Aleutian Islands endorsement because the F/V MISS JULI did not harvest groundfish in AI during the endorsement qualification period [EQP], January 1, 1992 to June 17, 1995, as required by 50 C.F.R. § 679.4(k)(4)(ii)(A). Mr Lovejoy's claimed cod harvests for crab bait do not meet the EQP requirement because these harvests were not commercial harvests.

Mr. Lovejoy did not present any specific arguments that he met the requirements of the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv), for an LLP groundfish license with an AI endorsement and therefore did not carry his burden of proving he satisfies the regulation. Mr. Lovejoy also did not harvest groundfish in AI from the F/V MISS JULI by June 17, 1995, which is required by the unavoidable circumstances regulation in 50 C.F.R. § 679.4(k)(8)(iv)(E).

Mr. Lovejoy does not qualify for an LLP crab license with a BSAI *bairdi/opilio* endorsement and an AI red king endorsement. Mr. Lovejoy meets the general qualification period requirement but he did not harvest any crab from the F/V MISS JULI between January 1, 1992 and December 31, 1994. He therefore does not meet the endorsement qualification period requirements for these endorsements in 50 C.F.R. § 679.4(k)(5)(ii)(B) & (E).

Mr. Lovejoy does not satisfy the requirements in the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv), for an LLP crab license with a BSAI *bairdi/opilio* endorsement and an AI red king endorsement. He asserts that the closure of these fisheries made it impossible for him to make the required harvests. The Dutch Harbor Tanner crab fishery was open throughout the general and endorsement qualification periods for this endorsement. Therefore, the claimed unavoidable circumstances did not actually occur, as required by 50 C.F.R. § 679.4(k)(8)(iv)(C)

The Dutch Harbor red king crab fishery did close in 1983 and has not reopened. Mr. Lovejoy did not prove that the closure of this fishery constitutes unavoidable circumstances, as defined by the unavoidable circumstances regulation, for two reasons. First, Mr. Lovejoy did not show that the closure of this fishery was unique to him or his vessel. Second, he did not harvest red king crab in the AI subarea after the unavoidable circumstances but before June 17, 1995.

ISSUES

1. Does Mr. Lovejoy qualify for an LLP groundfish license with an AI endorsement, based on the harvests of the F/V MISS JULI?
2. Do Mr. Lovejoy's harvests of cod for crab bait constitute groundfish harvests for an LLP groundfish license?
3. May Mr. Lovejoy receive an LLP groundfish license with an AI endorsement, based on the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv)?

4. Does Mr. Lovejoy qualify for an LLP crab license with endorsements for BSAI *opilio/bairdi* crab and Aleutian Islands red king crab, based on the harvests of the F/V MISS JULI?
5. May Mr. Lovejoy receive an LLP crab license with endorsements for BSAI *opilio/bairdi* and Aleutian Islands red king crab, based on the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv)?

ANALYSIS

To implement the LLP, NMFS was charged with constructing an official LLP record, which is a database containing information on vessel ownership, vessel characteristics and harvests by vessels during the qualification periods for licenses.⁵ NMFS constructed the official LLP record using information from weekly production reports, observer reports, fish tickets, processor annual reports and vessel registration information.⁶ The official LLP record is presumed to be correct. An applicant who claims that the official LLP record must prove that the applicant's claims, rather than the official LLP record, are correct.⁷

To count toward an LLP license, a harvest must be a documented harvest, which means "a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting."⁸ When I refer to a harvest in this Decision, I mean a documented harvest. To count toward an LLP groundfish license, a harvest must generally be of license limitation groundfish.⁹ When I refer to groundfish in this Decision, I mean license limitation groundfish. To count toward an LLP crab license, the harvest must be of BSAI crab.¹⁰ When I refer to crab in this Decision, I mean BSAI crab.

⁵ 50 C.F.R. § 679.2.

⁶ Final rule, 64 Fed. Reg. 42,826, 42,826 (1999)(supplementary information).

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

⁸ 50 C.F.R. § 679.2 (definition of documented harvest).

⁹ License limitation groundfish are "target species and the 'other species' category, specified annually pursuant to [50 C.F.R.] § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program are not considered license limitation groundfish." 50 C.F.R. § 679.2. NMFS sets the Total Allowable Catch [TAC] for groundfish harvested in the Gulf of Alaska and [BSAI] through the annual specification process in 50 C.F.R. § 679.20(a)(2). The NMFS website at <<<http://www.fakr.noaa.gov/sustainablefisheries/2003hrvstspecs.htm>>> has the TAC for groundfish in the GOA for 2003.

¹⁰ 50 C.F.R. § 679.2 (definition of crab species). Technically, crab species are all species covered by the Fishery Management Plan for BSAI King and Tanner Crabs.

1. Does Mr. Lovejoy qualify for an LLP groundfish license with an AI endorsement, based on the harvests of the F/V MISS JULI? No.

To receive an LLP groundfish license with an AI endorsement based on the F/V MISS JULI, Mr. Lovejoy must meet the requirements for groundfish harvests in a general qualification period and an endorsement qualification period.¹¹ According to the official LLP record, the F/V MISS JULI did not meet the harvest requirements in either of these qualifying periods.

A. General Qualification Period [GQP].

The harvest requirement for the general qualification period for an LLP groundfish license with an AI endorsement is in 50 C.F.R. § 679.4(k)(4)(i)(B), which requires one groundfish harvest in BSAI between January 1, 1988 and June 27, 1992.¹² Mr. Lovejoy asserted that he met this requirement and submitted a fish ticket which he stated showed a harvest of cod from the F/V MISS JULI in BSAI on January 28, 1989.

The IAD did not accept this fish ticket as showing that the F/V MISS JULI met the GQP requirement for several reasons. First, the fish ticket itself showed the names of two vessels, the F/V MISS JULI and the F/V R ADVANTAGE, so it was not clear which vessel harvested the cod. Second, the fish ticket showed a State of Alaska fishing permit held by someone other than Mr. Lovejoy. Third, by contrast, the fish ticket for crab harvested the next day – January 29, 1989 – clearly showed the F/V MISS JULI as the vessel from which the harvest occurred, and the harvest was recorded on Mr. Lovejoy’s permit. The IAD concluded that “it is far more likely than not that the F/V MISS JULI was not used to make a landing of groundfish (Pacific cod) using trawl gear on January 28, 1989.”¹³

On appeal, Mr. Lovejoy did not respond to RAM’s specific points. Mr. Lovejoy initially requested a hearing “to determine the landings actually made on the vessel and its general participation in the fisheries in question,” but then withdrew the request for a hearing.¹⁴ I am not conducting a hearing, or seeking to develop the record further on this point, because even if Mr.

¹¹ 50 C.F.R. § 679.4(k)(4)(i)(ii)

¹² 50 C.F.R. § 679.4(k)(4)(i)(B)(1). The other two ways to satisfy the general qualification period are more specialized. One applies to groundfish harvests with pot or jig gear by vessels less than sixty feet. 50 C.F.R. § 679.4(k)(4)(i)(B)(2). The other applies to applicants whose vessel “crossed-over” to crab during the Moratorium Program, as shown by a crab harvest between January 1, 1988 and February 9, 1992 in GOA and a groundfish harvest between February 10, 1992 and December 11, 1994 in the GOA or BSAI with trawl or longline gear but not sablefish using fixed gear. 50 C.F.R. § 679.4(k)(4)(i)(B)(3); Final LLP rule, 63 Fed. Reg. 52,642, 52,643 (1998)(supplementary information).

¹³ IAD at 5.

¹⁴ Letter from Christopher Kim, September 9, 2002; Memorandum to File from Edward Hein, Chief Appeals Officer, December 30, 2002.

Lovejoy harvested groundfish from the F/V MISS JULI in the general qualification period [GQP], he cannot receive an LLP license unless he harvested groundfish in the endorsement qualification period. I therefore do not resolve whether the F/V MISS JULI met the GQP requirement but turn to whether it made the required harvests in the endorsement qualification period.

B. Endorsement qualification period [EQP].

For an AI endorsement, the harvest requirement for the endorsement qualification period is one groundfish harvest in the AI Subarea between January 1, 1992 to June 17, 1995.¹⁵ The official LLP record shows no such harvest. Although Mr. Lovejoy asserts that he fished the Aleutians continuously since 1969 for crab, cod, herring and salmon, except for the last three years, and cod is a license limitation groundfish, Mr. Lovejoy has not produced any evidence of a groundfish harvest in AI between January 1, 1992 to June 17, 1995. A conclusory assertion, by itself, is not evidence of a groundfish harvest. Therefore, RAM correctly denied Mr. Lovejoy's application for an LLP groundfish license with an AI endorsement.

2. Do Mr. Lovejoy's harvests of cod for crab bait constitute groundfish harvests for an LLP groundfish license? No.

Mr. Lovejoy states that "[s]ome of my crab pots are rigged with 'cod triggers' to catch my own cod for bait."¹⁶ Although Mr. Lovejoy does not explicitly say this, I assume he is arguing that his harvest of cod for crab bait should constitute a groundfish harvest for meeting the requirements for an LLP groundfish license.

In Willard S. Ferris, this Office rejected that argument because the cod-for-crab-bait harvests were not commercial harvests:

To qualify for LLP groundfish license endorsements for both the Bering Sea and Aleutian Islands groundfish fisheries, the licensed vessel must have made at least one "documented harvest" of LLP groundfish in each of those fisheries during the period January 1, 1992 through June 17, 1995. A "documented harvest" is defined as "a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting." [50 C.F.R. § 679.2] Implicit in this definition is the idea that the lawful harvest must be a lawful *commercial* harvest. Otherwise it would make no sense to require that the harvest be recorded in compliance with commercial fishing regulations.

This view – that a documented harvest must result from commercial fishing – is

¹⁵ 50 C.F.R. § 679.4(k)(4)(ii)(A). The harvest must be in the AI Subarea or in waters shoreward of that area.

¹⁶ Letter from Stephen Lovejoy to RAM, December 10, 1999.

consistent with the LLP's purpose of regulating the commercial fishing of LLP groundfish and crab. This view is also supported by our statement in another appeal decision that compliance with commercial fishing regulations requires that one be lawfully engaged in commercial fishing. Section 3 of the Magnuson-Stevens Fishery Conservation and Management Act defines "commercial fishing" as "fishing in which the fish harvested, either in whole or part, are intended to enter commerce or enter commerce through sale, barter, or trade." [16 U.S.C. § 1802 (1994)]

Mr. Ferris claims that the F/V SEABROOKE harvested Pacific cod between January 1992 and September 1995 in both the Bering Sea and Aleutian Islands groundfish fisheries, and that the cod was used exclusively as bait in the course of the vessel's commercial crab fishing. He does not claim that the vessel did any other groundfish fishing in the Bering Sea or Aleutian Islands groundfish fisheries during the endorsement qualification period, nor does the LLP official record show that he did any such fishing.

Even if Mr. Ferris's claims of harvesting of Pacific cod are true, such harvests cannot be construed as the commercial fishing of groundfish because the cod were not harvested with the intent to enter commerce, nor did they enter commerce, through sale, barter, or trade. Although the Pacific cod were allegedly used as bait in the commercial fishing of crab, the cod themselves were not the object of any commercial fishing. Thus, the F/V SEABROOKE was not engaged in the commercial fishing of LLP groundfish when it harvested the cod for use as bait. Therefore, I conclude that the alleged harvests of Pacific cod cannot constitute documented harvests of groundfish for purposes of qualifying for LLP groundfish licenses or endorsements.¹⁷

The same conclusion applies to Mr. Lovejoy's claim. He states that he had cod triggers on his crab pots to catch cod for crab bait for his own use. The cod did not enter commerce through sale, trade or barter. Therefore, any cod harvests Mr. Lovejoy made were not the result of commercial fishing and cannot count toward an LLP groundfish license.

3. May Mr. Lovejoy receive an LLP groundfish license with an AI endorsement, based on the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv)? No.

Mr. Lovejoy did not raise this claim to RAM. On appeal, Mr. Lovejoy's counsel merely states that he had sufficient landings for an LLP groundfish and crab license "and, in the alternative, that both licenses should be awarded 'under the hardship exemption and/or any other avenue provided by law.'"¹⁸ If an applicant claims a license based on the unavoidable circumstances

¹⁷ *Willard S. Ferris*, Appeal No. 01-0004 at 1 - 2 (January 18, 2002)(footnotes omitted). Subsequent decisions in *Paula Brogdon*, Appeal No. 00-0011 (February 26, 2002), and *Ronald J. Tennison*, Appeal No. 00-0012 (April 5, 2002), reached the same result. These decisions, and all published decisions by the Office of Administrative Appeals, are on the NMFS Alaska region website at <http://www.fakr.noaa.gov/appeals/default.htm>.

¹⁸ Letter from Christopher Kim to Office of Administrative Appeals, September 9, 2002.

regulation, the applicant has the burden of proving that the applicant meets all the requirements of the regulation.¹⁹ This is simply an extension of the rule that an applicant who asserts that the official LLP record is incorrect has the burden of proof.

As this Office observed in *Pequod*, the unavoidable circumstances regulation “is technical and can be parsed in different ways,” but in that case, we analyzed the regulation as having seven requirements.²⁰ Mr. Lovejoy’s argument on appeal is conclusory. He does not specify how he meets any of the requirements in the regulation. For example, Mr. Lovejoy does not assert that he specifically intended to harvest groundfish during the endorsement qualification period and does not identify a circumstance that was unique, unavoidable and unforeseen or reasonably unforeseeable that prevented him from carrying through on his intention.²¹ Therefore, Mr. Lovejoy has not carried his burden of proving that he meets the requirements of the unavoidable circumstances regulation.

I note one other specific requirement. To receive an LLP groundfish license with an AI endorsement based on the unavoidable circumstances regulation, Mr. Lovejoy has to prove that he harvested groundfish in AI *after* the unavoidable circumstances but *before* June 17, 1995.²² But if Mr. Lovejoy could prove that he made such a harvest, he would not need to claim unavoidable circumstances because he would meet the standard EQP requirement for an AI endorsement, which is one groundfish harvest between January 1, 1992 and June 17, 1995. As this Office noted in *John Velsko*,

The effect of this requirement [a harvest by June 17, 1995] is that, for all LLP groundfish endorsements that require only one harvest in the endorsement qualification period, . . . an applicant can never receive credit under the unavoidable circumstances regulation because all the groundfish endorsement qualification periods end June 17, 1995. If an applicant had a harvest by June 17, 1995, the applicant would not need to claim unavoidable circumstances.²³

4. Does Mr. Lovejoy qualify for an LLP crab license with endorsements for BSAI *opilio/bairdi* and Aleutian Islands red king crab based on the harvests of the F/V MISS JULI? No.

¹⁹ *Pequod*, Appeal No. 00-0013 at 6 (April 12, 2002).

²⁰ *Id.* at 9.

²¹ These requirements are in the unavoidable circumstances regulation at 50 C.F.R. § 679.4(k)(8)(iv)(A) & (B).

²² 50 C.F.R. § 679.4(i)(8)(iv)(E).

²³ *John Velsko*, Appeal No. 02-0027 at 5 n.21 (January 29, 2003).

To receive an LLP crab license with an *opilio/bairdi* endorsement and an AI red king endorsement, Mr. Lovejoy must meet the requirements for crab harvests in a general qualification period and an endorsement qualification period.²⁴

A. General Qualification Period [GQP].

The basic general qualification period requirement for an LLP crab license is one crab harvest between January 1, 1988 and June 27, 1992.²⁵ Mr. Lovejoy easily meets this requirement. According to the official LLP record, the F/V MISS JULI had twenty-four harvests of BSAI *opilio* or *bairdi* crab in 1989 and 1990. The problem for Mr. Lovejoy is that those are the *only* crab harvests of any kind by the F/V MISS JULI in the official LLP record.

B. Endorsement qualification period [EQP].

The harvest requirement for the EQP for the BSAI *opilio/bairdi* endorsement is three *opilio* or *bairdi* harvests between January 1, 1992 and December 31, 1994 in BSAI.²⁶ *Opilio* and *bairdi* crab are Tanner crab. Mr. Lovejoy asserts that he fished Tanner crab near Dutch Harbor until that fishery closed. The Tanner crab fishery near Dutch Harbor was closed by the State of Alaska after the 1994 season.²⁷

The official LLP record shows that Mr. Lovejoy fished Tanner crab from the F/V MISS JULI intensively in 1989 and 1990 – twenty-four harvests during that time period – and that all the fishing *was* done near Dutch Harbor. But the official LLP record does not show the F/V MISS JULI made *any* tanner harvests after 1990 and Mr. Lovejoy does not submit documentation of any kind that it did. I therefore find that the F/V MISS JULI did not harvest Tanner crab between January 1, 1992 and December 31, 1994 and does not meet the EQP requirement for an LLP crab license with a BSAI *opilio/bairdi* endorsement.

As for the AI red king endorsement, the EQP requirement for that endorsement is one harvest of red king crab between January 1, 1992 to December 31, 1994 in the AI red king area/species

²⁴ 50 C.F.R. § 679.4(k)(i)(ii).

²⁵ 50 C.F.R. § 679.4(k)(5)(i)(A). There is an alternative way to meet the general qualification period in 50 C.F.R. § 679.4(k)(5)(i)(B) that applies to vessels that “crossed over” to crab from groundfish between February 10, 1992 to December 11, 1994, which meant the vessel landed crab under the Vessel Moratorium Program for Groundfish and Crab, the predecessor program to the LLP. *See* LLP Final rule, 63 Fed. Reg. 52,642, 52,643 (1998)(supplementary information).

²⁶ 50 C.F.R. § 679.4(k)(5)(ii)(B).

²⁷ Annual Management Report for the Shellfish Fisheries of the Westward Region, 2000, Regional Report No. 4K01-45, Alaska Department of Fish and Game (September 2001) at 104 & Table 4-10 (hereinafter ADFG Management Report)(Eastern Aleutian District Tanner crab fishery).

endorsement area.²⁸ The official LLP record shows no such harvests and Mr. Lovejoy does not argue that he made any and did not present documentation that he made any. I therefore find that the F/V MISS JULI does not meet the EQP requirement for an LLP crab license with an AI red king endorsement.

5. May Mr. Lovejoy receive an LLP crab license with an *opilio/bairdi* endorsement and an AI red king endorsements, based on the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv)? No.

Mr. Lovejoy argues that “I have fished in Dutch Harbor red king crab until it was closed. And then the Dutch Harbor tanner crab fishery until it closed. I own and have maintained crab gear waiting for these fisheries to re-open.”²⁹ Mr. Lovejoy admittedly did not make the harvests required for an *opilio/bairdi* endorsement or an AI red king endorsement. I assume Mr. Lovejoy is claiming that the closure of these fisheries made it impossible for him to make the crab harvests required for these endorsements.

The unavoidable circumstances regulation is the only regulation that authorizes NMFS to credit an applicant with a crab or groundfish harvest that the applicant did not make but would have made due to unavoidable circumstances.³⁰ The applicant must meet all the requirements of the unavoidable circumstances regulation. I will analyze whether Mr. Lovejoy may receive an LLP crab license under this regulation.

A. The *opilio/bairdi* endorsement.

The unavoidable circumstances regulation requires that the applicant prove that he had a specific intent to participate in the fishery for which he seeks a license but was thwarted by a circumstance that actually occurred.³¹ The Dutch Harbor Tanner crab fishery was open throughout the 1994 season. This fishery was open throughout the general and endorsement qualification periods for this endorsement.³² The unavoidable circumstance – closure of the fishery – did not actually occur. Therefore, I conclude Mr. Lovejoy cannot receive an LLP license with an *opilio/bairdi* endorsement based on the unavoidable circumstances regulation. I do not analyze whether Mr. Lovejoy meets the other requirements in the regulation.

²⁸ 50 C.F.R. § 679.4(k)(ii)(E).

²⁹ Letter from Mr. Lovejoy with RAM, December 20, 1999 (submitted with application).

³⁰ 50 C.F.R. § 679.4(k)(8)(iv)

³¹ 50 C.F.R. § 679.4(k)(8)(iv)(A), (C).

³² 50 C.F.R. § 679.4(k)(5)(i)(ii). For the years 1988 to 1994, the Tanner crab season for the Eastern Aleutian District – the Tanner crab fishery near Dutch Harbor – opened January 15th and closed between March 31st and May 7th. ADFG Management report, *supra* note 27, at Table 4-10.

B. The AI red king endorsement.

The State of Alaska closed the Dutch Harbor red king fishery after the 1982/1983 season and has not reopened it.³³ Mr. Lovejoy asserts that he fished the Dutch Harbor red king crab fishery until it closed. I will assume that is true.³⁴

Nonetheless, Mr. Lovejoy does not meet two requirements of the unavoidable circumstances regulation. First, an unavoidable circumstance must be unique to the applicant or his vessel.³⁵ Mr. Lovejoy does not argue that the closure of an entire fishery is unique to him or the F/V MISS JULI. Second, Mr. Lovejoy did not harvest AI red king crab after the unavoidable circumstance but before June 17, 1995.³⁶ I conclude that Mr. Lovejoy may not receive an LLP license with an AI red king crab harvest under the unavoidable circumstances regulation. I do not need to analyze whether Mr. Lovejoy meets the other requirements of the regulation.

I note that because the Dutch Harbor red king crab fishery closed in 1983, it was not open at all from 1988 to 1994, the years which constitute the general and endorsement qualification period for an AI red king crab endorsement. The Dutch Harbor red king fishery was more suitable for smaller craft, since boats could catch near Dutch Harbor and deliver there. The Adak red king crab fishery was less suitable for smaller craft, since it was farther out on the Aleutian chain. The Adak red king crab fishery remained open until the 1995/1996 season.³⁷

As a result, under the current LLP regulations, if the State reopens a red king crab fishery near Dutch Harbor, the vessels that last participated in the Dutch Harbor red king crab fishery will not receive LLP licenses to participate in that fishery. The vessels that will receive LLP licenses to participate in the Dutch Harbor red king fishery will be those that participated in the Adak red king fishery. This is because the LLP regulations embody a policy choice to credit more recent participation in a wider area – the entire Aleutian Islands Subarea of BSAI – over less recent participation in a more limited geographical area – the Dutch Harbor red king crab fishery in the Aleutian Islands Subarea.

FINDINGS OF FACT

1. Stephen Lovejoy did not harvest groundfish from the F/V MISS JULI in the Aleutian Islands Subarea between January 1, 1992 and December 31, 1994.

³³ ADFG Management Report, *supra* note 27, at 93, Table 4-1 & Figure 4-2.

³⁴ Mr. Lovejoy's 1983 fishing history is not part of the official LLP record because that year is before all of the qualifying periods for LLP licenses.

³⁵ 50 C.F.R. § 679.4(k)(8)(iv)(B)(2).

³⁶ This is required by 50 C.F.R. § 679.4(k)(8)(iv)(E).

³⁷ ADFG Management Report, *supra* note 27, at 93 & Table 4-2.

2. The cod that Stephen Lovejoy caught from the F/V MISS JULI and used for bait did not enter commerce through sale, trade or barter.
3. The Tanner crab fishery near Dutch Harbor was open throughout the 1994 Tanner crab season.
4. The Tanner crab fishery near Dutch Harbor was open throughout the general and endorsement qualification periods for an LLP crab license with an *opilio/bairdi* endorsement.
5. Stephen Lovejoy did not harvest AI red king crab from the F/V MISS JULI after the claimed unavoidable circumstances – closure of the Dutch Harbor red king fishery – but before June 17, 1995.

CONCLUSIONS OF LAW

1. Mr. Lovejoy does not qualify for an LLP groundfish license with an AI endorsement because the F/V MISS JULI did not harvest groundfish in the endorsement qualification period in the Aleutian Islands, as required by 50 C.F.R. § 679.4(k)(4)(ii)(A).
2. Mr. Lovejoy's harvests of cod for crab bait do not constitute groundfish harvests for purposes of receiving an LLP groundfish license.
3. Mr. Lovejoy has not met his burden of proving that he meets the requirements of the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv), to receive an LLP groundfish license with an AI endorsement.
4. Mr. Lovejoy does not qualify for an LLP crab license with an endorsement for BSAI *opilio/bairdi* crab based on the harvests of the F/V MISS JULI, because the F/V MISS JULI did not make three harvests of harvest *opilio* or *bairdi* in the endorsement qualification period in BSAI, as required by 50 C.F.R. § 679.4(k)(5)(ii)(B).
5. Mr. Lovejoy does not qualify for an LLP crab license with an endorsement for AI red king crab, based on the documented harvests of the F/V MISS JULI, because the F/V MISS JULI did not make one harvest of red king crab in the endorsement qualification period in AI, as required by 50 C.F.R. § 679.4(k)(5)(ii)(B).
6. Mr. Lovejoy may not receive an LLP crab license with a *bairdi/opilio* endorsement because the claimed unavoidable circumstances did not occur, as required by 50 C.F.R. § 679.4(k)(8)(iv)(E).
7. Mr. Lovejoy may not receive an LLP crab license with a AI red king crab endorsement under the unavoidable circumstances regulation because Mr. Lovejoy did not show that the claimed unavoidable circumstances – closure of the Dutch Harbor red king fishery – was unique to him or his vessel, as required by 50 C.F.R. § 679.4(k)(8)(iv)(C).

8. Mr. Lovejoy may not receive an LLP crab license with an AI red king crab endorsement because the F/V MISS JULI did not harvest red king crab in AI after any claimed unavoidable circumstances but before June 17, 1995, as required by 50 C.F.R. § 679.4(k)(8)(iv)(E).

DISPOSITION

The IAD is AFFIRMED. This Decision takes effect March 28, 2003, 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, March 10, 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 in support of the motion.

Mary Alice McKeen
Appeals Officer