



## ANALYSIS

To qualify for an LLP groundfish with a Southeast Outside area endorsement based on the fishing history of the F/V JOHNNY ROGER, Ms. Olney must show that the F/V JOHNNY ROGER meets the requirements for documented harvests in a general qualification period [GQP] and an endorsement qualification period [EQP].<sup>5</sup> The IAD concluded that the F/V JOHNNY ROGER did not meet the GQP requirement. I affirm the IAD on that basis and conclude that Ms. Olney does not meet the GQP requirement.

An applicant for an LLP groundfish license can meet the general qualification period requirement in one of three ways: 50 C.F.R. § 679.4(k)(4)(i)(B)(1), (2) or (3). The regulatory requirement is in bold, followed by an analysis of whether the F/V JOHNNY ROGER meets the requirement.<sup>6</sup>

**[1] The vessel made one harvest of license limitation groundfish in the Gulf of Alaska or the Bering Sea/Aleutian Islands [BSAI] between January 1, 1988 and June 27, 1992. [50 C.F.R. § 679.4(k)(4)(i)(B)(1)].<sup>7</sup>**

According to the official LLP record, the F/V JOHNNY ROGER made no harvests of license limitation groundfish in the BSAI or the Gulf of Alaska between January 1, 1988 and June 27, 1992. Ms. Olney submitted three fish tickets that showed the following harvests: ling cod, quillback rockfish and yelloweye rockfish in the Southeast Outside District on May 9, 1991; ling cod, quillback rockfish and yelloweye rockfish on September 5, 1991; ling cod, quillback rockfish, tiger rockfish, canary rockfish and yelloweye rockfish in the Southeast District on June 9, 1992. These dates are within January 1, 1988 and June 27, 1992 but the question is whether these species are license limitation groundfish.

Two definitions are relevant here: groundfish and license limitation groundfish. In the context of Alaska federal fishing regulations, groundfish means:

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<sup>5</sup> 50 C.F.R. § 679.4(k)(4).

<sup>6</sup> To count toward an LLP license, a harvest must be a documented harvest which is “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. When I refer to a harvest, I mean a documented harvest.

<sup>7</sup> Although this provision only refers a harvest in the Gulf of Alaska, the IAD at page 3 states that the official LLP record contains no harvests from the F/V JOHNNY ROGER between January 1, 1988 and June 27, 1992, which means no harvests in the Gulf of Alaska [GOA] or BSAI. I believe that RAM has interpreted 50 C.F.R. § 679.4(k)(4)(iv) to mean that an applicant who meets the EQP requirement for an LLP license with a GOA endorsement (Central Gulf, Western Gulf, Southeast Outside) can meet the GQP requirement by a harvest of license limitation groundfish in BSAI. I do not analyze whether 50 C.F.R. § 679.4(k)(iv)(A) and (B) impose any additional requirements because the F/V JOHNNY ROGER made no harvests in the BSAI.

(1) FMP [Fishery Management Plan] species as listed in Table 2 to this part.

(2) Target species and the “other species” category, specified annually pursuant to § 679.20(a)(2).

License limitation groundfish means:

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.*<sup>8</sup>

The annual specification in 50 C.F.R. § 679.20(a)(2) is the process whereby NMFS sets the Total Allowable Catch [TAC] for groundfish harvested in the Gulf of Alaska and BSAI.

Ling cod is neither a groundfish nor a license limitation groundfish. It is not an FMP species listed in Table 2.<sup>9</sup> It is not managed under the North Pacific Groundfish Fishery Management Plan. NMFS does not specify annually, pursuant to 50 C.F.R. § 679.20(a)(2), the total allowable catch for ling cod.<sup>10</sup>

Quillback rockfish, tiger rock fish, yelloweye rockfish and canary rock fish are demersal shelf rockfish.<sup>11</sup> The rockfish on Ms. Olney’s fish tickets were caught in the area east of 140° W. longitude, which is the Southeast Outside District of the Gulf of Alaska.<sup>12</sup> NMFS *does* specify the annual TAC for these species and so they are groundfish, but the North Pacific Fishery Management Council and NMFS specifically excluded them from the definition of license limitation groundfish. The Council and NMFS excluded them from the LLP because NMFS defers general management of the demersal shelf rockfish in Southeast Alaska to the State of Alaska.<sup>13</sup>

Therefore, the fish tickets submitted by Ms. Olney do not show harvests of license limitation

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<sup>8</sup> 50 C.F.R. § 679.2 (definition of license limitation groundfish)(emphasis added).

<sup>9</sup> Table 2a to Part 679.

<sup>10</sup> *See, e.g.*, 2005 Harvest Specifications for Gulf of Alaska, 70 Fed. Reg. 8979, 8962 (2005) on the NMFS Alaska Region website [www.fakr.noaa.gov/sustainablefisheries/2005/hrvstspecs.html](http://www.fakr.noaa.gov/sustainablefisheries/2005/hrvstspecs.html).

<sup>11</sup> Final Rule, 69 Fed. Reg. 68,095, 68,095 (2004).

<sup>12</sup> 50 C.F.R. § 679.2 (definition of Southeast Outside District of Gulf of Alaska).

<sup>13</sup> Final LLP Rule, 63 Fed. Reg. 52,642, 52,643 (1998). But NMFS still sets recordkeeping and other requirements for these species. Final Rule, 69 Fed. 68,095, 68,095 (2004).

groundfish and therefore do not show that she satisfies this way of meeting the GQP requirement for an LLP groundfish license. By the same token, Ms. Olney does not need an LLP groundfish license to conduct directed fishing for these species – ling cod anywhere in Alaska and demersal shelf rockfish in the Southeast Outside district – because they are not license limitation groundfish.<sup>14</sup>

**[2] The vessel made one harvest of license limitation groundfish in the Gulf of Alaska between January 1, 1988 and December 31, 1994, if the harvest was with pot or jig gear from a vessel less than 60 feet. [50 C.F.R. § 679.4(k)(4)(i)(B)(2)]**

The F/V JOHNNY ROGER did harvest license limitation groundfish in 1993 and 1994: redbanded rockfish and silvergray rockfish on June 12, 1993 and redbanded rockfish on September 16, 1994.<sup>15</sup> These are not demersal shelf rockfish and therefore could count toward LLP qualification. The F/V JOHNNY ROGER is less than 60 feet.<sup>16</sup> But, according to the Official LLP Record, the F/V JOHNNY ROGER made these harvests with hook and line gear, *not* pot or jig gear, and Ms. Olney does not dispute that.

**[3] The vessel made one harvest of license limitation groundfish in the Gulf of Alaska or BSAI between January 1, 1988 and June 17, 1995; one harvest of BSAI king or Tanner crab between January 1, 1988 and February 9, 1992; and one harvest of any groundfish in the Gulf of Alaska or BSAI between February 10, 1992 and December 11, 1994, with trawl gear or longline gear, except sablefish with fixed gear. [50 C.F.R. § 679.4(k)(4)(i)(B)(3)]**

This regulation has three parts. Ms. Olney satisfies two of the three parts. The F/V JOHNNY ROGER harvested license limitation groundfish between January 1, 1988 and June 17, 1995: redbanded rockfish and silvergray rockfish on June 12, 1993; redbanded rockfish on September 16, 1994; and redbanded rockfish on May 6, 1995.<sup>17</sup> The F/V JOHNNY ROGER harvested groundfish in the Gulf of Alaska or BSAI between February 10, 1992 and December 11, 1994 using trawl or longline gear, excluding sablefish with fixed gear. The rockfish harvests on June 12, 1993 and September 16, 1994 meet this requirement as well.

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<sup>14</sup> An LLP license is only required to conduct directed fishing for license limitation groundfish. 50 C.F.R. § 679.4(k)(1)

<sup>15</sup> Official LLP Record. Ms. Olney submitted copies of these fish tickets: fish ticket J93039465 (June 12, 1993) and fish ticket P94 015340 (Sept. 16, 1994). Ms. Olney did not wish a copy of the Official LLP Record for the F/V JOHNNY ROGER because she has the original fish tickets from the vessel. Memorandum to File from Mary Alice McKeen (June 20, 2005).

<sup>16</sup> It is 40 feet length overall. Ms. Olney's LLP application (Dec. 10, 1999).

<sup>17</sup> See note 14 *supra*.

But the official LLP record does *not* show that the F/V JOHNNY ROGER harvested any king or Tanner crab in BSAI between January 1, 1988 and February 9, 1992. Ms. Olney does not dispute this. This provision basically extends the GQP for crab vessels and is known as the “crab crossover” provision.<sup>18</sup> Without the crab harvest, the F/V JOHNNY ROGER does not satisfy this way of meeting the general qualification period requirement.

I note that the F/V JOHNNY ROGER *does* meet the EQP requirement for an LLP license with a Southeast Outside area endorsement for a category C vessel. It made at least one documented harvest of license limitation groundfish in the Southeast Outside district between January 1, 1992 and June 17, 1995.<sup>19</sup> But an applicant must meet *both* the general qualification period requirement and the endorsement qualification period requirement. Since the F/V JOHNNY ROGER did not meet any GQP requirement, I conclude that Ms. Olney does not qualify for an LLP groundfish license with a Southeast Outside endorsement based on the fishing history of the F/V JOHNNY ROGER.

Ms. Olney filed a separate application for an LLP groundfish license based on the fishing history of the F/V LUCY O, ADFG 36978. RAM denied that application and Ms. Olney appealed that denial. Ms. Olney’s appeal concerning the F/V LUCY O is completely separate from this appeal. Nothing in this Decision has any bearing on Ms. Olney’s appeal concerning the F/V LUCY O.

#### FINDINGS OF FACT

1. The F/V JOHNNY ROGER did not make a documented harvest of license limitation groundfish in BSAI or the Gulf of Alaska between January 1, 1988 and June 27, 1992.
2. The F/V JOHNNY ROGER did not make a documented harvest of license limitation groundfish in BSAI or the Gulf of Alaska between January 1, 1988 and December 31, 1994 with pot or jig gear.
3. The F/V JOHNNY ROGER did not make a documented harvest of king or Tanner crab in BSAI between January 1, 1988 and February 9, 1992.

#### CONCLUSIONS OF LAW

1. Ms. Olney does not satisfy any general qualification period requirement for an LLP license with a Southeast Outside area endorsement in 50 C.F.R. § 679.4(k)(4)(i).
2. Ms. Olney does not qualify for an LLP groundfish license with a Southeast Outside area endorsement, based on the fishing history of the F/V JOHNNY ROGER.

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<sup>18</sup> Final LLP Rule, 63 Fed. Reg. 52,642, 52,643 (1998).

<sup>19</sup> 50 C.F.R. § 679.4(k)(ii)(O).

## DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect September 11, 2005, unless by that date the Regional Administrator orders review of the Decision.

Ms. Olney 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, August 22, 2005. 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.

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Mary Alice McKeen  
Administrative Judge