

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 03-0011
)	
CHARLES G. WEST,)	DECISION
Appellant)	
)	July 28, 2004
_____)	

STATEMENT OF THE CASE

Charles G. West filed a timely appeal of an Initial Administrative Determination (IAD) issued on April 8, 2003, by the Restricted Access Management (RAM) Program under the North Pacific Groundfish and Crab License Limitation Program (LLP).¹ Mr. West can appeal the IAD because it directly and adversely affects his interests, as required by 50 C.F.R. § 679.43(b).

The IAD denied Mr. West's application for an LLP crab license with a catcher vessel designation and six area/species endorsements: Aleutian Island brown king, Aleutian Island red king, Bristol Bay red king, *C. opilio* and *C. bairdi* (Tanner), St. Matthew blue king and Pribilof red and blue king.

On appeal, Mr. West argues that he qualifies for an LLP crab license based on the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), which is known as section 504 of the Rehabilitation Act, and the unavoidable circumstance regulation, which is federal regulation 50 C.F.R. § 679.4(k)(8)(iv). The record provides sufficient information to determine Mr. West's appeal.² I therefore close the record and decide Mr. West's appeal.

SUMMARY

Charles West is not eligible for an LLP crab license pursuant to the Rehabilitation Act. Mr. West has not shown that he meets the essential eligibility requirements for an LLP license and that he would receive an LLP license if NMFS made reasonable accommodations to his disability. Mr. West would receive an LLP license only if NMFS made fundamental changes to the LLP and awarded Mr. West an LLP license based on Mr. West's receiving a percentage of the catch of the vessels on which he worked as a deck hand, deck boss or engineer. A major change to a government benefit or program is not a reasonable accommodation and is therefore not authorized under the Rehabilitation Act.

¹ The LLP is located in 50 C.F.R. § 679. Specifically: 50 C.F.R. § 679.1(j) (purpose and scope); 50 C.F.R. § 679.2 (definitions); 50 C.F.R. § 679.4(a)(6) (definition of harvesting privilege); 50 C.F.R. § 679.4(k)(license requirements); 50 C.F.R. § 679.7 (prohibitions); 50 C.F.R. § 679.43 (appeals). The LLP regulations are on the NMFS Alaska Region website: <http://www.fakr.noaa.gov/regs/summary.htm>.

² 50 C.F.R. 679.43(g)(2).

Mr. West is not eligible to receive an LLP license based on the unavoidable circumstance regulation, 50 C.F.R. § 679.4(k)(8)(iv). He does not meet three requirements of the regulation. First, he did not own a vessel that harvested LLP crab between January 1, 1988 and February 9, 1992. Second, Mr. West has not shown that he had a specific intent to harvest, as a vessel owner, the particular crab species for which he is seeking endorsements in the endorsement qualification periods for those endorsements. Third, Mr. West did not harvest the crab species for which he is seeking endorsements after the unavoidable circumstance and before June 17, 1995.

ISSUES

1. Is Mr. West eligible for an LLP crab license pursuant to section 504 of the Rehabilitation Act of 1973?
2. Is Mr. West eligible for an LLP crab license based on the unavoidable circumstance regulation, 50 C.F.R. § 679.4(k)(8)(iv)?

ANALYSIS

To receive an LLP license, an applicant must be an “eligible applicant.”³ Federal regulation 50 C.F.R. § 679.2 defines “eligible applicant” as follows:

Eligible applicant means (for purposes of the LLP program) a qualified person [⁴] who submitted an application during the application period announced by NMFS and:

(1) **For a groundfish license or crab species license, who owned a vessel on June 17, 1995, from which the minimum number of harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or**

(2) **For a groundfish license or crab species license, to whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or**

(3) **For a crab species license, who was an individual who held a State of**

³ 50 C.F.R. § 679.4(k)(4); 50 C.F.R. § 679.4(k)(5).

⁴ A qualified person for the LLP means “a person who was eligible on June 17, 1995, to document a fishing vessel under chapter 121, Title 46, USC.” 50 C.F.R. § 679.2.

Alaska permit for the Norton Sound king crab summer fishery in 1993 or 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G) [for a Norton Sound blue and red king crab endorsement] or a corporation that owned or leased a vessel on June 17, 1995 that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or temporary contractor; or

(4) For a scallop license, who qualified for a scallop license as specified at § 679.4(g)(2) of this part; or

(5) **Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794(a).**[emphasis added]

Mr. West does not meet the first definition of eligible applicant: he did not own a vessel with an LLP-qualifying fishing history as of June 17, 1995. Mr. West does not meet the second definition of eligible applicant: he does not own the LLP-qualifying fishing history of a vessel. The third definition of eligible applicant is irrelevant to Mr. West because he is not seeking a Norton Sound blue and red king crab endorsement. The fourth definition of eligible applicant is irrelevant to Mr. West because he is not seeking a scallop license. Mr. West claims an LLP license under the fifth definition of eligible applicant: that he can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. § 794(a), which is known as section 504 of the Act.

1. Is Mr. West eligible for an LLP crab license pursuant to section 504 of the Rehabilitation Act of 1973? No.

Section 504 of the Rehabilitation Act of 1973 provides in relevant part:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, **solely by reason of her or his disability**, be excluded from the participation in, **be denied the benefits of, or be subjected to discrimination under any program** or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.⁵ [emphasis added]

The LLP regulatory history does not shed any light on the purpose of the Rehabilitation Act definition of LLP eligible applicant. The Rehabilitation Act was not mentioned in deliberations by the North Pacific Fishery Management Council when it took final action on the LLP.⁶ The

⁵ 29 U.S.C. § 794(a).

⁶ Transcript (uncertified), North Pacific Fishery Management Council Meeting, June 15 - 17, 1995 at 69. The transcript is available on the Administrative Appeals section of the NMFS Alaska region website under "Other Documents," <http://www.fakr.noaa.gov/appeals/default.htm>.

Rehabilitation Act definition of eligible applicant was not in the proposed LLP regulations.⁷ It was a new provision in the final LLP regulation.⁸ The commentary to the final LLP regulations is not helpful. The commentary merely notes the new provision and restates it.⁹

This Office analyzed what an applicant has to prove to be eligible for an LLP license based on the Rehabilitation Act in *Jonathan Schumacher (Schumacher I)*, Appeal No. 00-0010 (September 16, 2002) and *Jonathan Schumacher (Schumacher II)*, Appeal No. 02-0058 (March 24, 2003).¹⁰ Since the LLP regulatory history had no specific guidance on the meaning of the Rehabilitation Act definition of LLP eligible applicant, *Schumacher* relied on the overall LLP regulatory history, the Rehabilitation Act itself, the Department of Commerce provisions implementing the Act and court decisions interpreting the Act.¹¹

For a Rehabilitation Act claim, an applicant must show four things: first, the applicant is an individual with a disability as defined by the Act;¹² second, apart from the disability, the applicant is otherwise qualified for an LLP license; third, the applicant is being denied an LLP license solely by reason of his disability; fourth, the LLP is a program conducted by a federal Executive agency.¹³

I assume, without deciding, that Mr. West meets the first requirement and is an individual with a disability.¹⁴ Mr. West submits his own statement that he was injured in 1990 while crab fishing in

⁷ Proposed Rule, 62 Fed. Reg. 43,866, 43,866 - 43,872, 43,882 - 43,889 (1997).

⁸ Final Rule, 63 Fed. Reg. 52,642, 52,646, 52,653 (1998).

⁹ “Also, an otherwise qualified individual who can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 would be considered an eligible applicant.” *Id.* at 52,646.

¹⁰ Mr. Schumacher applied for different LLP licenses, based on different vessels, and RAM denied his applications in separate decisions. All decisions of this Office are available on the NMFS Alaska Region website at <http://www.fakr.noaa.gov/appeals/default.htm>.

¹¹ *Schumacher I* at 4 - 7.

¹² The definition of “individual with a disability” in the Rehabilitation Act is at 29 U.S.C. § 705(20). A “disability” is a physical or mental impairment that “constitutes or results in a substantial impediment to employment” or “substantially limits one or more major life activities.” 29 U.S.C. § 705(9)(A)(B).

¹³ *Schumacher I* at 5.

¹⁴ I do not decide whether Mr. West is an individual with a disability because I conclude that, even if he were, he does not meet the second and third requirement for a Rehabilitation Act claim.

the Bering Sea and that this injury prevented him from fishing for a number of years.¹⁵ Mr. West also provided a letter from an orthopedic surgeon dated January 23, 1993. The surgeon had reviewed a videotape of the accident that caused Mr. West's injury and stated that, as of January 1993, Mr. West "continues to have quite disabling back pain."¹⁶

Mr. West meets the fourth requirement. The License Limitation Program is a program conducted by an Executive agency, namely the National Marine Fisheries Services within the National Oceanic Atmospheric Administration, which is part of the Department of Commerce.

What must Mr. West prove to meet the second and third requirements of Section 504: that he is "otherwise qualified" for an LLP license and is being denied "solely by reason of her or his disability"? The Supreme Court has interpreted these requirements as imposing upon the government a duty of "reasonable accommodation" or "reasonable modification."¹⁷ *Schumacher I* explains:

The government violates the Rehabilitation Act when a person can show that he or she would receive a government benefit if the government made **reasonable accommodations** for the person's disability. If an applicant could participate in a government program only if the government made substantial modifications or fundamental alterations in the program, the applicant is **not** "otherwise qualified" for the program and is **not** being denied solely based on a disability. The fundamental nature of the program, not the individual's disability, is causing the individual to be denied.¹⁸

The Department of Commerce regulations implementing the Rehabilitation Act adopt this standard. The regulations define an otherwise qualified individual as one who meets "the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity."¹⁹ Under these regulations, a measure cannot be a reasonable accommodation if it

¹⁵ Appeal Statement of Charles West at 1. Mr. West stated that he planned to participate in the finfish fishery in Alaska in 2003 and submitted a lease and a license for the F/V BRIGADIER for 2003.

¹⁶ Letter from Paul Schwaegler, M.D. to Matthew P. Kaul, M.D. (Jan. 25, 1993) with Dr. Schwaegler's patient notes from July 13, 1992 to January 25, 1993.

¹⁷ *Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *Alexander v. Choate*, 469 U.S. 287 (1985); *School Bd. of Nassau County v. Arline*, 408 U.S. 273 (1987).

¹⁸ *Schumacher I* at 6 (emphasis in original).

¹⁹ 15 C.F.R. § 8c.3, definition of "qualified individuals with handicaps", subsection (2). This term means the same as an "otherwise qualified" individual. The regulation differentiates between programs "under which a person is required to perform services or to achieve a level of accomplishment" and "any other program or activity." Whatever the type of program, the disabled person must meet the "essential eligibility requirements" of the program to be "otherwise qualified."

changes a fundamental requirement of a program.²⁰

Mr. West proposes two changes in the LLP that would enable him to receive an LLP license: First, Mr. West states that NMFS should award him an LLP license because from 1979 until his injury in 1990, he was involved in the Bering Sea crab fisheries as a deck hand, deck boss or engineer and received a percentage of the catch of different vessels on which he worked. Second, Mr. West states that NMFS should award him an LLP license because he would have qualified for an LLP license by leasing a vessel but for his injury in 1990.

I conclude that neither of Mr. West's proposed changes are reasonable accommodations within the meaning of the Rehabilitation Act. Both change the fundamental structure of the LLP, which is that NMFS awards one LLP license to a vessel owner, or to the owner of the vessel's fishing history, based on one vessel's fishing history.²¹ I base that conclusion on four reasons.

First, the award of LLP licenses to vessel owners was a fundamental policy choice in the LLP. As *Schumacher I* explained:

The definition of "eligible applicant" for the LLP in federal regulation 50 C.F.R. § 679.2 requires *ownership* – of a qualifying vessel or the qualifying fishing history – except in the narrowly circumscribed exception applicable to the Norton Sound red and blue king fishery in 1993 or 1994. Apart from the Norton Sound exception, the LLP regulations award licenses to vessel owners, not lessees, not skippers, not permit holders.

The regulatory history shows that award of LLP licenses to vessel owners was a deliberate policy choice. The Council, when it approved the LLP, unanimously adopted motions for both crab and groundfish licenses that licenses would be issued to "current owners (as of 6/17/95) of qualified vessels." In making the motion to adopt the crab provision, Council member Dave Benton noted: "Through the discussion [of LLP], both groundfish and crab, the Council has heard again extensive testimony regarding the need to award licenses to current owners and I think this is consistent with public testimony and with the Council's discussions on this matter at numerous Council meetings."²²

This Office observed in *Magne Nes*: "Under the LLP, the owner of the vessel, or the owner of the

²⁰ Final Rule, 53 Fed. Reg. 19,270, 19,272 (1988)(commentary to regulations).

²¹ This principle holds for all licenses NMFS issued under the original LLP regulations, which were based on documented harvests in a general qualification period and an endorsement qualification period. Final Rule, 63 Fed. Reg. 52,642 (1998). NMFS has allowed vessel histories to be combined to meet new requirements, such as the recent participation period for crab licenses, but a vessel's fishing history may still only be used to support *one* LLP license. Final Rule, 68 Fed. Reg. 46,117 (2003).

²² *Schumacher I* at 10 - 11, quoting Transcript of NPFMC Meeting, June 15, 1995, *supra* note 6.

vessel's fishing history, receives credit for the documented harvests made from a vessel, not the captain nor the State of Alaska permit holder who recorded the crab harvests.”²³ Nor the deck hand, deck boss, engineer or person who is leasing the vessel.

Second, under Mr. West's proposals, one vessel's fishing history would yield more than one LLP license.²⁴ Each vessel that Mr. West worked on as a deck hand, deck boss or engineer had an owner. That vessel owner had the right to receive an LLP license based on that vessel's fishing history. But, under Mr. West's proposal, NMFS would have to award an LLP license to Mr. West *and* the vessel owner for the same vessel's fishing history.

Third, Mr. West's request that he receive credit for a percentage of a vessel's catch, or some IFQ based on the vessel's catch, is inconsistent with the structure of the LLP. The LLP awards *all* the credit for a vessel's catch in the LLP qualifying periods to one person: the vessel owner or the owner of the vessel's fishing history. NMFS awards an LLP crab endorsement if the vessel caught *any* amount of LLP crab during the general qualification period and *any* amount of the specific crab endorsement species in the endorsement qualification period.²⁵

The LLP is not an IFQ program and is not like the IFQ program for halibut, which awards halibut quota share based on how many pounds of halibut a vessel caught in particular years.²⁶ As the Department of Commerce stated in its commentary on the regulations implementing the Rehabilitation Act:

The agency is required to make modifications in order to enable an applicant with handicaps to participate [in a program offered by the agency], but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer.²⁷

Fourth, the criterion of vessel ownership, or vessel fishing history ownership, does not discriminate against applicants who have a disability. The Rehabilitation Act embodies a “nondiscrimination principle.”²⁸ The basic purpose of section 504 is “to ensure that handicapped

²³ *Magne Nes*, Appeal No. 02-0044 at 9 (March 5, 2004).

²⁴ *Schumacher I* at 11

²⁵ 50 C.F.R. § 679.4(k)(5)(i)&(ii). LLP crab are BSAI king or Tanner crab. 50 C.F.R. § 679.2 (definition of crab species).

²⁶ 50 C.F.R. § 679.40(a)(4)(i).

²⁷ Final Rule, 53 Fed. Reg. 19,270, 19,272 (1988).

²⁸ *Schumacher I* at 7.

individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others.”²⁹ Section 504 seeks to assure “evenhanded treatment of qualified handicapped persons” in government programs, not “affirmative efforts to overcome the disabilities caused by handicaps.”³⁰ If a proposed change goes beyond what is necessary to eliminate discrimination, or the effects of discrimination, it is not a reasonable accommodation under the Rehabilitation Act.³¹

Schumacher I stated that the criterion of vessel ownership, or vessel fishing history ownership,

does not result from outdated or archaic assumptions about what disabled persons can and cannot do. It does not require that an applicant prove that he or she can perform any of the physical activities in operating a boat. A disabled person can own a vessel. Even a corporation – a legal entity only – can own a vessel. The criteria of vessel ownership has no intrinsic relationship to an applicant’s disability or lack of disability.

Many reasons exist why an applicant might not have owned a vessel on June 17, 1995: a financial setback, poor fishing season, personal problems such as divorce or death in the family, boat breakdown, a natural disaster, a withdrawal of promised financial support from a partner or bank or, as Mr. Schumacher has argued, onset of a disability. NMFS does not examine why any applicant did not own a vessel on June 17, 1995 and does not award an LLP license based on *any* reason why an applicant did *not* own a vessel on June 17, 1995.

In essence, Mr. Schumacher asks NMFS to conduct such an inquiry for disabled persons only. This does not redress discrimination or the effects of discrimination. This would result in disabled persons receiving special treatment because of their disabilities, rather than equal or even-handed treatment which takes into account their disabilities. The change is therefore not a reasonable modification under section 504 of the Rehabilitation Act.³²

Therefore, I conclude that the Rehabilitation Act does not provide a way for an applicant to receive an LLP license if the applicant does not meet the first or second definition of eligible applicant: ownership of a vessel with an LLP-qualifying fishing history as of June 17, 1995 or ownership of an LLP-qualifying fishing history apart from the vessel.

An applicant might question whether this interpretation of the Rehabilitation Act definition of

²⁹ *School Bd. of Nassau County v. Arline*, 408 U.S. 273, 282 (1987).

³⁰ *Southeastern Community College v. Davis*, 442 U.S. 397, 410 (1979).

³¹ *Id.*

³² *Schumacher I* at 9.

eligible applicant renders that provision a nullity. An applicant might argue that if an applicant met the first or second definition of eligible applicant, the applicant would not need the fifth – the Rehabilitation Act – definition of eligible applicant.

I conclude that the mere presence of the Rehabilitation Act definition of eligible applicant does *not* mean that the other definitions of eligible applicant violate the Rehabilitation Act. I conclude that the purpose of the Rehabilitation Act definition of eligible applicant is to restate the non-discrimination principle of the Rehabilitation Act and the Department of Commerce regulations implementing the Act. The Rehabilitation Act provision in the LLP informs LLP applicants that the Act applies and that they have the right not to be discriminated against based on disability.

The LLP applicant still must show that the applicant could meet the essential requirements for an LLP license, *if* NMFS made a reasonable accommodation for the person’s disability. For example, the Rehabilitation Act could provide grounds to challenge denial of an LLP license *if* NMFS required an applicant to prove the applicant could physically operate a vessel and made no reasonable accommodation for a person with a disability who could operate a vessel with the help of a crew member. Or the Rehabilitation Act could provide grounds to challenge discriminatory administration of the LLP *if* NMFS required a person to sign an application and made no reasonable accommodation for a person with a disability who was physically unable to sign.

But Mr. West has not shown that NMFS has done either of those things – or anything comparable – in the regulations it has adopted for the LLP or in the administration of the program. Therefore, I conclude that Mr. West is not eligible for an LLP license based on the Rehabilitation Act.

2. Is Mr. West eligible for an LLP crab license based on the unavoidable circumstance regulation, 50 C.F.R. § 679.4(k)(8)(iv)?

Mr. West states that he faced unusual circumstances that justify awarding him an LLP license: [1] his participation in the Bering Sea crab fisheries between 1979 and 1990 as a deck hand, deck boss and engineer; and [2] his participation in the groundfish finfish fishery by leasing a vessel in 2003. The LLP does not have a provision awarding an LLP license based on unusual circumstances. It does have an unavoidable circumstance provision, which is what I believe Mr. West is claiming.

Mr. West does not meet three requirements of the unavoidable circumstance regulation, 50 C.F.R. § 679.4(k)(8)(iv). First, he did not own a vessel on June 17, 1995 that made a documented harvest of LLP crab between January 1, 1988, and February 9, 1992.³³ Second, he has not alleged, or proven, he had a specific intent to participate as a vessel owner during the endorsement qualification period for any of the specific crab fisheries for which he is seeking an endorsement:

Pribilof red and blue king

January 1, 1993 - December 31, 1994

³³ 50 C.F.R. § 679.4(k)(8)(iv)(first sentence).

BSAI <i>C. opilio/bairdi</i> (Tanner)	January 1, 1992 - December 31, 1994
St. Matthew blue king	January 1, 1992 - December 31, 1994
Aleutian Islands brown king	January 1, 1992 - December 31, 1994
Aleutian Islands red king	January 1, 1992 - December 31, 1994
Bristol Bay red king	January 1, 1991 - December 31, 1994. ³⁴

A specific intent usually requires that the applicant have a permit and a vessel equipped to prosecute the fishery.³⁵ A hope or a desire to own a vessel that could participate in a fishery is not a specific intent to participate in that fishery.³⁶ An intent to participate as a deck hand, deck boss or engineer in a specific fishery is not a specific intent to participate as a vessel owner. An intent to participate in a groundfish fishery in 2003 does not show a specific intent to participate in any of these crab fisheries between 1991 and 1994.

Third, the unavoidable circumstance applicant must have owned a vessel (or the fishing history of the vessel) that harvested the particular crab species for which the applicant is seeking an endorsement after the unavoidable circumstance and before June 17, 1995.³⁷ Mr. West did not do this. He has not participated in the BSAI crab fisheries in any capacity – vessel owner, deck hand, deck boss or engineer – since his injury in 1990.

Mr. West states that he wishes to pass on his love of fishing to his children. Mr. West’s desire to do this seems quite genuine. But the LLP regulations do not take this into account for either the standard applicant or the unavoidable circumstance applicant.

I therefore conclude that Mr. West is not eligible for an LLP license based on the unavoidable circumstance regulation, 50 C.F.R. § 679.4(k)(8)(iv).

FINDINGS OF FACT

1. Charles West did not harvest any crab species as a vessel owner between January 1, 1988 and

³⁴ 50 C.F.R. § 679.4(k)(8)(iv)(A). The endorsement qualification periods for crab endorsements are at 50 C.F.R. § 679.4(k)(5)(ii).

³⁵ *Pequod, Inc*, Appeal No. 00-0013 at 14 - 17 (April 12, 2002).

³⁶ *Schumacher I* at 14 - 15.

³⁷ 50 C.F.R. § 679.4(k)(8)(iv)(E). This harvest by June 17, 1995 is required and NMFS has denied many unavoidable circumstance applicants who did not make this harvest. *Bowlden, Inc.*, Appeal No. 02-0037 (July 7, 2004); *St. George Marine, Inc.*, Appeal No. 02-0024 at 13 - 15 (Feb. 19, 2004); *Mark Donovick*, Appeal No. 02-0008 at 8 - 9 (Sept. 27, 2002); *Little Ann, Inc.*, Appeal No. 01-0022 at 3 at (July 10, 2002); *Ronald Tennison*, Appeal 00-0012 at 2, 6 (April 15, 2002); *Pequod, Inc.*, Appeal No. 00-0013 at 7, 24 (April 12, 2002); *Paula Brogdon*, Appeal No. 00-0011 at 3 (Feb. 26, 2002).

February 9, 1992.

2. Charles West did not harvest any crab species as a vessel owner after any claimed unavoidable circumstance and before June 17, 1995.

CONCLUSIONS OF LAW

1. Charles West is not eligible for an LLP crab license pursuant to Section 504 of the Rehabilitation Act of 1973.

2. Charles West is not eligible for an LLP crab license based on the unavoidable circumstance regulation, 50 C.F.R. § 679.4(k)(8)(iv).

DISPOSITION

The IAD that is the subject of this Decision is **AFFIRMED**. This Decision takes effect on August 27, 2004, unless by that date the Regional Administrator orders review of this Decision.

Charles West 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 9, 2004. A motion for reconsideration must be in writing, must specify one or more material matters of fact or law that the appeals officer overlooked or misunderstood and must be accompanied by a written statement in support of the motion.

Mary Alice McKeen
Appeals Officer