



## ANALYSIS

The general requirement for an RPP harvest is at federal regulation 50 C.F.R. § 679.4(k)(5)(iii)(A):

The RPP is the period from January 1, 1996, through February 7, 1998. To qualify for a crab species license, defined at § 679.2, a person must have made at least one documented harvest of any amount of LLP crab species from a vessel during the RPP and must have held a LLP qualifying fishing history at the time of that documented harvest. A LLP qualifying fishing history meets the documented harvest requirements at paragraphs (k)(5)(i) and (k)(5)(ii) of this section.<sup>5</sup>

Exemption 4 provides an exception to the requirement that the person must have held the LLP qualifying fishing history at the time of the RPP harvest. Located at 50 C.F.R. § 679.4(k)(iv), Exemption 4 provides:

Exception to allow purchase of LLP qualifying fishing history after the documented harvest in the RPP. To qualify for a LLP crab species license, a person who made a documented harvest of LLP crab species during the period from January 1, 1998, through February 7, 1998, must have obtained or entered into a contract to obtain, the LLP qualifying fishing history by 8:36 a.m. Pacific time on October 10, 1998.

This exception has two requirements: a documented harvest of LLP crab between January 1, 1998 and February 7, 1998 and a contract to purchase an LLP qualifying fishing history by October 10, 1998. The F/V Aleutian No. 1 harvested LLP crab on January 29, 1998. Ronald Peterson is an owner of the F/V Aleutian No. 1.<sup>6</sup> And Ronald Peterson entered into a contract to purchase the LLP qualifying fishing history of the F/V SEAWIND on September 29, 1998.<sup>7</sup>

RAM denied Mr. Peterson's claim to Exemption 4 because RAM had already issued an LLP

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<sup>5</sup> Paragraph (k)(5)(i), which is 50 C.F.R. § 679.4(k)(5)(i), contains the general qualification period [GQP] requirement. Paragraph (k)(5)(ii), which is 50 C.F.R. § 679.4(k)(5)(ii), contains the endorsement qualification period [EQP] requirement.

<sup>6</sup> Ronald Peterson is the managing partner in New Era Partnership, which owns the F/V ALEUTIAN No. 1. Josetein Karlsen is the other partner. Abstract of Title [Exhibit 1]; Declarations of Ronald Peterson and Jostein Karlsen, submitted Dec. 31, 2001 [Exhibits 2 & 3]. Mr. Karlsen owns the same percentage of LLC 3697 as he owns of the F/V ALEUTIAN No. 1. Declaration of Ronald Peterson, Dec. 4, 2000. [Exhibit 4]

<sup>7</sup> The contract clearly and unambiguously provides for transfer of the qualifications for an LLP license to Ronald Peterson. Fishing Rights Sale Agreement, Sept. 29, 1998. [Exhibit 5] See 50 C.F.R. § 679.2 (definition of eligible applicant for LLP license based on ownership of a fishing history).

license – LLC 3968 – based on the fishing history of the F/V ALEUTIAN No. 1. RAM concluded that the RPP fishing history of a vessel could only support *one* LLP license. It concluded that the fishing history of the F/V ALEUTIAN No. 1 was already used.

This Office in *Bella K of Seattle, Inc.*, [Bella K] analyzed the RPP requirement and concluded that the RPP fishing history of one vessel could support more than one LLP crab license. *Bella K* concluded with respect to the general RPP requirement that

50 C.F.R §679.4(k)(5)(iii)(A), as revised, requires a person who holds one or more LLP crab licenses to have made only one documented harvest of any amount of LLP crab species during the Recent Participation Period. Such a person is a “recent participant” for purposes of the regulation and is entitled to retain all LLP crab licenses for which the person held the LLP qualifying fishing history at the time the RPP documented harvest was made.<sup>8</sup>

*Bella K* concluded with respect to Exemption 4:

In addition, under 50 C.F.R. §679.4(k)(5)(iv), if the person made a documented harvest of LLP crab species during the period January 1, 1998 through February 7, 1998, the person is entitled to retain any LLP crab licenses for which the person obtained the LLP qualifying fishing history (or contracted to obtain such history) by 8:36 a.m. Pacific Time on October 10, 1998. The Appeals Officer concludes that 50 C.F.R §679.4(k)(5)(iii)(A) and (iv) do not require a person to make a separate documented harvest of LLP crab species from a different vessel for each LLP crab license held. The Appeals Officer concludes that Amendment 10, the revised RPP rule, and the Crab FMP do not give NMFS authority to further restrict the number of LLP crab licenses that a person may retain.<sup>9</sup>

Thus, Mr. Peterson can use an RPP crab harvest from the F/V ALEUTIAN No. 1 to keep alive LLP license LLC3967 even though he also used the RPP history of the F/V ALEUTIAN No. 1 to keep alive LLP license LLC3968.<sup>10</sup> Therefore, I conclude that Ronald Peterson meets the requirements of Exemption 4 to the RPP requirement in 50 C.F.R. §679.4(k)(5)(iv) and that LLP crab license LLC3967 should not be revoked.

#### FINDINGS OF FACT

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<sup>8</sup> *Bella K. of Seattle, Inc.*, Appeal No. 02-0006 at 2 (March 25, 2004). *Bella K* concluded that NMFS had no authority to merge LLP licenses. *Id* at 7 - 13.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> RAM did not deny Mr. Peterson’s claim to Exemption 4 based on any difference in the identity of the license holders of LLC 3967 and LLC 3968.

1. The F/V SEAWIND had an LLP qualifying fishing history that supported the issuance of LLP license LLC3967.
2. Ronald Peterson obtained the fishing history of the F/V SEAWIND by a contract entered into by October 10, 1998.
3. The F/V ALEUTIAN No. 1 made a documented harvest of LLP crab between January 1, 1998 and February 7, 1998.

#### CONCLUSIONS OF LAW

1. Ronald Peterson meets the requirements of Exemption 4 to the RPP requirement in 50 C.F.R. §679.4(k)(5)(iv).
2. LLP crab license LLC3967 should not be revoked.

#### DISPOSITION AND ORDER

The IAD and Reconsideration IAD that are the subjects of this Decision are VACATED. RAM is ORDERED to issue LLP crab license LLC3967 to Ronald Peterson as a transferable license. This Decision takes effect March 21, 2005, unless the Regional Administrator orders a different effective date pursuant to 50 C.F.R. § 679.43(o).

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, February 28, 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 Appeals Officer, and must be accompanied by a written statement in support of the motion.

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Mary Alice McKeen  
Appeals Officer