

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 02-0008
)	
MARK DONOVICK,)	DECISION (1)
Appellant)	
)	September 27, 2002
_____)	

Mark Donovanick appeals an Initial Administrative Determination [IAD] by the Restricted Access Management Program [RAM], dated April 1, 2002, issued under the North Pacific Groundfish and Crab License Limitation Program [LLP].¹ Mr. Donovanick can appeal the IAD because it directly and adversely affects his interests. [50 C.F.R. § 679.43(b)]

The IAD stated that Mr. Donovanick was eligible for an LLP groundfish license with Central Gulf and Southeast Outside endorsements, based on the fishing history of the F/V ROUGHNECK. The IAD denied Mr. Donovanick endorsements for Aleutian Islands and Bering Sea on his groundfish license. According to the official LLP record, the F/V ROUGHNECK did not make the harvests required in the endorsement qualification period for these endorsements: one harvest of LLP groundfish in the Aleutian Islands and one harvest of LLP groundfish in the Bering Sea between January 1, 1992 and June 17, 1995. [50 C.F.R. § 679.4(k)(4)(ii)(A)(B)]

The IAD denied Mr. Donovanick a crab license with a Bering Sea and Aleutian Islands Area C. *opilio* and *C. bairdi* endorsement, based on the fishing history of either the F/V ROUGHNECK or the F/V ST. DOMINICK. Mr. Donovanick asserted that the F/V ROUGHNECK sank in 1994 and that the F/V ST. DOMINICK was the replacement vessel for the F/V ROUGHNECK.

On appeal, Mr. Donovanick submitted copies of fish tickets which, on their face, appear to show harvests of an LLP groundfish species – Pacific cod – in the Bering Sea and/or Aleutian Islands Subareas between January 1, 1992 to June 17, 1995. These harvests were not in the official LLP record. I issued a Partial Remand to RAM on September 13, 2002 so RAM could examine these fish tickets. RAM is conducting that review.

Mr. Donovanick also submitted fish ticket records of crab harvests from the State of Alaska. These did not raise any question as to the validity of the RAM’s determination on Mr. Donovanick’s application for an LLP crab license. The record has sufficient information for me to decide the crab appeal, as required by 50 C.F.R. § 679.43(g)(2). I therefore close the record and decide here only Mr. Donovanick’s appeal of the denial of an LLP crab license in IAD 02-002.

SUMMARY

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)(requirements for licenses); 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>

The IAD is affirmed with respect to Mr. Donovanick's application for an LLP crab license with an *opilio/bairdi* endorsement. The F/V ROUGHNECK did not make the harvests required in the endorsement qualification: three *opilio* or *bairdi* harvests between January 1, 1992 and December 31, 1994. The F/V ROUGHNECK therefore does not meet the standard requirements for this endorsement in 50 C.F.R. § 679.4(k)(5)(ii). The F/V ROUGHNECK does not receive this endorsement based on the special provision applicable to lost vessels in 50 C.F.R. § 679.4(k)(8)(iii), because that requires that the lost vessel have met all the requirements for an endorsement *before* it sank. Finally, Mr. Donovanick is not eligible for an LLP license based on the unavoidable circumstances regulation, because the F/V ST. DOMINICK, which was the replacement vessel for the F/V ROUGHNECK, did not harvest *bairdi* or *opilio* crab after the F/V ROUGHNECK sank but *before* June 17, 1995, as explicitly required by 50 C.F.R. § 679.4(k)(8)(iv)(E).

ISSUES

1. Does Mr. Donovanick meet the requirements for an LLP crab license with an *opilio/bairdi* endorsement in federal regulation 50 C.F.R. § 679.4(k)(5), based on the fishing history of the F/V ROUGHNECK?
2. Does Mr. Donovanick meet the requirements for an LLP crab license with an *opilio/bairdi* endorsement, based on the lost vessel provision in federal regulation 50 C.F.R. § 679.4(k)(8)(iii)?
3. Does Mr. Donovanick meet the requirements for an LLP crab license with an *opilio/bairdi* endorsement, based on the unavoidable circumstances provision in federal regulation 50 C.F.R. § 679.4(k)(8)(iv)?
4. Is Mr. Donovanick eligible for an LLP crab license with an *opilio/bairdi* endorsement?

ANALYSIS

1. Does Mr. Donovanick meet the requirements for an LLP crab license with an *opilio/bairdi* endorsement in federal regulation 50 C.F.R. § 679.4(k)(5), based on the fishing history of the F/V ROUGHNECK? No.

To receive an LLP crab license with an *opilio/bairdi* endorsement based on the fishing history of the F/V ROUGHNECK, Mr. Donovanick must show that the F/V ROUGHNECK made harvests in a general qualification period [GQP] and an endorsement qualification period [EQP].² He must meet both requirements. Mr. Donovanick meets the GQP requirement but not the EQP requirement. Therefore he does not meet the requirements in 50 C.F.R. § 679.4(k)(5) for a crab

² 50 C.F.R. § 679.4(k)(i)(ii). An applicant for a crab LLP license must also now meet the requirements for a crab harvest in a recent participation period. 50 C.F.R. § 679.4(k)(iii). The IAD did not analyze whether Mr. Donovanick met those requirements and that question is now moot.

license with an *opilio/bairdi* endorsement.

Mr. Donovanick submitted evidence of the following crab harvests:

[1] *Bairdi* harvests from the F/V ROUGHNECK, ADFG # 34394, in 1988 **in Southeast Alaska.**

[2] Dungeness crab harvests from the a vessel with ADFG # 12127 in 1988 **in Southeast Alaska.** According to the State website for the Commercial Fisheries Entry Commission, the vessel with ADFG # 12127 is the F/V BERNICE.³

[3] A brown king crab harvest from the F/V ROUGHNECK in 1989 **in Southeast Alaska.**

[4] *Bairdi* harvests from the F/V ROUGHNECK in 1989 **in Southeast Alaska.**

[5] *Bairdi* harvests from the F/V ROUGHNECK in 1990 and 1991 **in the Bering Sea Subarea of BSAI.**

[6] *Bairdi* harvests from a vessel with ADFG # 30866 in 1993, 1994 and 1995 **in Southeast Alaska.** According to the State website for the Commercial Fisheries Entry Commission, the vessel with ADFG # 12127 is the F/V LADY JO.⁴

[7] A red king crab harvest from the F/V ST. DOMINICK, ADFG # 13437, on September 24, 1995 **in the Bering Sea Subarea of BSAI.**

[8] A blue king crab harvest from the F/V ST. DOMINICK , ADFG # 13437, on September 24, 1995 **in the Bering Sea Subarea of BSAI.**

The fish tickets in items #1, # 2, # 3, #4, and # 6 are all crab harvests in Southeast Alaska.⁵ Crab harvests in Southeast Alaska do not count toward an LLP crab license. An LLP crab license is necessary only to fish for “crab species,” which are king and Tanner crab **harvested in BSAI.**⁶ *Bairdi* is a Tanner crab. Therefore, while *bairdi* harvests in Southeast Alaska do not support an

³ <http://www.cfec.state.ak.us/VESLIST/YR2002/ADFG/A0005.HTM>, visited 9/19/02.

⁴ <http://www.cfec.state.ak.us/VESLIST/YR2002/ADFG/A0023.HTM>, visited 9/19/02.

⁵ Items [2] and [6] are also harvests not made by either the F/V ROUGHNECK or the F/V ST. DOMINICK.

⁶ 50 C.F.R. § 679.4(k)(1)(ii). Crab species means “all crab species covered by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands.” 50 C.F.R. § 679.2. That is why the LLP crab license is technically a “crab species license.”

LLP license, neither is an LLP license necessary for a vessel to continue fishing *bairdi* in Southeast Alaska. All species of crab in Southeast Alaska are managed by the State of Alaska pursuant to State permits and licenses.⁷

Item # 5 is the only harvest of BSAI crab by the F/V ROUGHNECK. Items # 7 and # 8 are the only BSAI crab harvests by the F/V ST. DOMINICK.

A. Does the F/V ROUGHNECK meet the general qualification period requirement: one harvest of any LLP crab species between January 1, 1988 and June 27, 1992? Yes.

The basic general qualification period requirement is in federal regulation 50 C.F.R. § 679.4(k)(5)(i): one harvest of any LLP crab species between January 1, 1988 and June 27, 1992.⁸ According to the official LLP record, the F/V ROUGHNECK meets that requirement.⁹ Mr. Donovanick's evidence corroborates that conclusion. I conclude that the F/V ROUGHNECK harvested *bairdi* crab in the Bering Sea in 1990 and 1991 [item # 5 on list above] and meets the general qualification period requirement.

B. Does the F/V ROUGHNECK meet the endorsement qualification period requirement: three *opilio* or *bairdi* harvests between January 1, 1992 and December 31, 1994? No.

The endorsement qualification period requirement for the *opilio/bairdi* endorsement is in federal regulation 50 C.F.R. § 679.4(k)(5)(ii): three *opilio* or *bairdi* harvests between January 1, 1992 and December 31, 1994.

According to the official LLP record, the F/V ROUGHNECK did not make any *opilio* or *bairdi* harvests in BSAI between January 1, 1992 and December 31, 1994. Mr. Donovanick did not submit any evidence that the official LLP record was incorrect on that point. None of Mr. Donovanick's evidence, listed above, shows harvests by the F/V ROUGHNECK in BSAI between January 1, 1992 and December 31, 1994. The only crab harvests from the F/V ROUGHNECK in BSAI occurred in 1990 and 1991. These harvests meet the general qualification period requirement but not the endorsement qualification period requirement.

Mr. Donovanick stated that the F/V ROUGHNECK sank in 1994 and that he replaced it with the F/V ST. DOMINICK. The question is whether the sinking of the F/V ROUGHNECK and Mr.

⁷ 5 AAC 32; 5 AAC 34; 5 AAC 35. AAC stands for Alaska Administrative Code.

⁸ 50 C.F.R. § 679.4(k)(5)(i). The regulation has an alternate way of meeting the GQP, 50 C.F.R. § 679.4(k)(5)(ii), which extends the GQP until December 31, 1994 for vessels that fished groundfish between January 1, 1988 and 9, 1992 and "crossed over" into crab between February 10, 1992 to December 11, 1994, the qualifying period under the Vessel Moratorium Program, the predecessor program to the LLP. See Commentary to Final LLP Rule, 63 Fed. Reg. 52,642, 52,643 (1998).

⁹ IAD at 4.

Donovick's purchase of a replacement vessel – the F/V ST. DOMINICK – enables Mr. Donovick to receive an LLP crab license, even though the F/V ROUGHNECK did not meet the harvest requirement for the endorsement qualification period. Mr. Donovick asks for consideration under two regulations: the regulation on lost or destroyed vessels, 50 C.F.R. § 679.4(k)(8)(iii), and the unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv).

3. Does Mr. Donovick meet the requirements for an LLP crab license based on the lost vessel provision in federal regulation 50 C.F.R. § 679.4(k)(8)(iii)? No.

Federal regulation 50 C.F.R. § 679.4(k)(8)(iii) provides:

An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel on which the eligible applicant's qualification was based was lost or destroyed, will be issued a license. This license:

(A) Will have the vessel designation of the lost or destroyed vessel.

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA [length overall] greater than the MLOA [maximum length overall] designated on the license.

An eligible applicant means a person who owned a vessel that made the required harvests for an LLP license or a person who owned the qualifying fishing history, apart from the vessel.¹⁰ To receive an LLP license under the lost vessel provision, Mr. Donovick must be an “eligible applicant . . . who qualifies for a groundfish license or crab species license but whose vessel on which the eligible applicant's qualification was based was lost or destroyed.”¹¹

This provision only helps a person who owned a vessel that met *all* the harvests requirements – both in the general qualification period and the endorsement qualification period – and *then* sank.¹² Since the F/V ROUGHNECK did not make the harvests required in the endorsement qualification period *before* it sank, this regulation, 50 C.F.R. § 679.4(k)(8)(iii), does not authorize NMFS to grant Mr. Donovick an LLP license.

The lost vessel regulation does not authorize NMFS to combine harvests made by the F/V ROUGHNECK with the harvests made by a replacement vessel. The unavoidable circumstances regulation allows that in limited circumstances. I will now examine whether Mr. Donovick

¹⁰ 50 C.F.R. § 679.2, definition of eligible applicant, subsection (1) and (2). The other definitions of eligible applicant are not relevant to this Appeal. Subsection (3) applies only to a person seeking a crab license with a Norton Sound red and blue king endorsement. Subsection (4) applies to a person seeking an LLP scallop license. Subsection (5) is a person who can show eligibility for an LLP license under the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), commonly known as Section 504.

¹¹ 50 C.F.R. § 679.4(k)(8)(iii).

¹² Final Rule, 63 Fed. Reg. 52,642, 52,646 (1998).

meets the requirements of that regulation.

4. Does Mr. Donovick meet the requirements for an LLP crab license based on the unavoidable circumstances provision in federal regulation 50 C.F.R. § 679.4(k)(8)(iv)? No.

The unavoidable circumstances regulation, 50 C.F.R. § 679.4(k)(8)(iv), may help an applicant who has suffered an unavoidable circumstance, such as the loss of a vessel, and because of that, is unable to make the harvests required for an LLP license. But the unavoidable circumstances regulation has many requirements and an applicant must meet each requirement.¹³ The regulation provides in full:

A qualified person who owned a vessel on June 17, 1995, **that made a documented harvest of license limitation groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992**, but whose vessel was unable to meet all the criteria in paragraph (k)(4) of this section for a groundfish license or paragraph (k)(5) of this section for a crab species license because of an unavoidable circumstance (i.e., the vessel was lost, damaged, or otherwise unable to participate in the license limitation groundfish or crab fisheries) may receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area.

(B) The specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

(1) Unavoidable.

(2) Unique to the owner of that vessel, or unique to that vessel.

(3) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred.

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species.

(E) **Any amount of license limitation groundfish or appropriate crab species was harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17, 1995, is applying and that the license limitation groundfish or crab species was harvested after the vessel was**

¹³ The language of the regulation makes no exception to any of its requirements and neither does the regulatory history. *See* Commentary to Final LLP Rule, 63 Fed. Reg. 52,642, 52,647 (1998) (“If all these criteria are met to the satisfaction of NMFS, a license may be issued for the relevant fishery and endorsement area. This [unavoidable circumstances] provision is not designed to be a ‘loop hole’ through which an eligible applicant that does not meet the qualification requirements can be issued a license.”).

prevented from participating by the unavoidable circumstance but before June 17, 1995. [emphasis added]

This regulation requires that an applicant prove that he or she was struck by an unavoidable circumstance *and*, notwithstanding the unavoidable circumstance, it requires that the applicant still prove two harvests. The unavoidable circumstances regulation does not excuse the absence of all harvests.

The first harvest that the applicant must prove is in the first sentence in the regulation, namely that the vessel made a documented harvest of LLP crab between January 1, 1988 and February 9, 1992.¹⁴ Mr. Donovan meets that requirement because the F/V ROUGHNECK harvested *bairdi* in BSAI in 1990 and 1991.

The second harvest is in section (E) of the unavoidable circumstances regulation: a harvest “in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person . . . is applying . . . after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.” Since Mr. Donovan is seeking a *opilio/bairdi* endorsement, section (E) requires that Mr. Donovan prove that his vessel harvested *opilio* or *bairdi* crab in BSAI after the F/V ROUGHNECK sank but before June 17, 1995.

But what vessel? If the applicant’s vessel sank, the regulation does not require that the applicant prove that a sunk vessel made a harvest by June 17, 1995. The applicant may meet the requirement for a before-June 17, 1995-harvest with a replacement vessel. Thus, the unavoidable circumstances regulation does, in effect, permit an applicant to combine the fishing history of the sunk vessel with the replacement vessel to meet the harvest required in section (E). We can therefore consider the harvest record of the F/V ST. DOMINICK.

The F/V ST. DOMINICK did not make an *opilio* or *bairdi* harvest in BSAI after the F/V ST. DOMINICK sank but before June 17, 1995. The official LLP record does not show such a harvest. Mr. Donovan submitted a printout from the Alaska Department of Fish and Game [ADFG] that listed a red king and a blue king harvest in BSAI by the F/V ST. DOMINICK on September 24, 1995.¹⁵ These harvests were not of the required species: they are not *opilio* or *bairdi*. These harvests are not within the required time period: they were not before June 17,

¹⁴ This time period – January 1, 1988 to February 9, 1992 – is shorter than the basic general qualification period – January 1, 1988 to June 27, 1992. It is the qualifying period under the Vessel Moratorium Program. *Pequod, Inc.*, Appeal No. 00-0013 at 10 (April 12, 2002). *Pequod* thoroughly analyzed the requirements in the unavoidable circumstances regulation.

¹⁵ These harvests were coded “18,” the harvest code for “confiscated” by ADFG. In constructing the official LLP record, NMFS excluded harvests with that code. Memorandum to File from Mary Alice McKeen, Sept. 24, 2002. Since the harvests were after June 17, 1995, I do not analyze the effect of the harvests having this code.

1995.¹⁶

Mr. Donovanick states that he has struggled financially since the F/V ROUGHNECK sank in 1994. He states that he “purchased the [F/V] ST. DOMINICK in 1996. I have rebuilt the main engine twice, replaced the shaft, stern-tube, propeller and windows. Vessel maintenance is expensive, not to mention fuel, bait and gear.” Mr. Donovanick describes strong family ties to Alaska: “My wife and her family have lived and fished in the Shumagin Islands (Sand Point) for many generations.”¹⁷ He states that denying him these permits will cause him extreme hardship.

The regulations do not authorize me to take into account an applicant’s investment in the crab fisheries, his family ties to the fisheries or the economic hardship from the denial of an LLP license.¹⁸ The LLP regulations award licenses to vessels that made specified harvests. If a vessel sinks without having made the harvests required for an LLP license, the regulations strictly limit the conditions under which that vessel’s owner can receive a license.

When NMFS proposed the LLP in the Federal Register, the only comment on the unavoidable circumstances regulation was that the requirement for a harvest by June 17, 1995 was “unfair to a person who could have used the provision except that he or she did not have a documented harvest before prior to June 17, 1995.” NMFS responded:

Response: Based on the approved recommendation of the Council, NMFS narrowly crafted the unavoidable circumstances provision to grant eligibility only when the minimum requirements for eligibility under the EQP [endorsement qualification period] would have been met except that circumstances beyond the control of the owner of the vessel at that time prevented that vessel from meeting those requirements. However, the unavoidable circumstances provision was never intended to extend the EQP.^[19] Unless a

¹⁶ These harvests occurred in the area for a Pribilof red and blue king endorsement. Memorandum (e-mail) from Mukhya Khalsa to Mary Alice McKeen, Sept. 20, 2002. *If* these harvests occurred before June 17, 1995, I would examine whether Mr. Donovanick met the other requirements in the unavoidable circumstances regulation and could receive a Pribilof red and blue king endorsement.

¹⁷ Letter from Mark Donovanick to NMFS, May 27, 2002.

¹⁸ The only place in the LLP where NMFS may examine an applicant’s financial investment is when an applicant seeks to change a gear designation on an LLP groundfish license: “An applicant may request a change of gear designation based on a significant financial investment in converting a vessel or purchasing fishing gear on or before February 7, 1998 and making a documented harvest with that gear on or before December 31, 1998.” 50 C.F.R. § 679.4(k)(3)iv)(E). A “significant financial investment” is having spent at least \$100,000 toward the conversion. 50 C.F.R. § 679.4(k)(3)iv)(F)(2).

¹⁹ The ending date for the EQP for all crab endorsements is December 31, 1994. 50 C.F.R. § 679.4(k)(5)(ii). Therefore, the unavoidable circumstances provision *does* give crab applicants longer than the EQP to make this harvest because it gives them until June 17, 1995. The ending date for the EQP for all groundfish endorsements is June 17, 1995. 50 C.F.R. § 679.4(k)(4)(ii). Therefore, the

person can demonstrate his or her intent to remain an active participant in the groundfish fisheries through a documented harvest made from a vessel, or its replacement, and submitted after that vessel was lost, damaged, or unable to participate but before June 17, 1995, that person cannot use the unavoidable-circumstances provision. A harvest before June 17, 1995, indicated a participant's good faith effort to remain in the groundfish fisheries. This requirement is not unfair because any participation after June 17, 1995, the date of final Council action, is not considered a qualifying harvest under the LLP.²⁰

Whatever the pros and cons of this requirement may be, NMFS is bound by the requirement and so am I. Since the F/V ST. DOMINICK did not harvest *bairdi* or *opilio* crab in BSAI after the F/V ROUGHNECK sank but before June 17, 1995, NMFS does not have authority to issue Mr. Donovick an LLP crab license under the unavoidable circumstances provision.²¹

I therefore conclude that Mr. Donovick is not eligible for an LLP license with an *opilio/bairdi* endorsement under the standard criteria in 50 C.F.R. § 679.4(k)(5)(ii), the special provision for lost vessels in 50 C.F.R. § 679.4(k)(8)(iii) or the unavoidable circumstances regulation at 50 C.F.R. § 679.4(k)(8)(iv).

FINDINGS OF FACT

1. The F/V ROUGHNECK harvested an LLP crab species – *bairdi* – in BSAI in the general qualification period: January 1, 1988 to June 27, 1992
2. The F/V ROUGHNECK did not harvest any *opilio* or *bairdi* crab in BSAI during the endorsement qualification period, January 1, 1992 to December 31, 1995.
3. The F/V ST. DOMINICK did not harvest *opilio* or *bairdi* in BSAI after the F/V ROUGHNECK sank but *before* June 17, 1995.

CONCLUSIONS OF LAW

unavoidable circumstances provision does *not* give groundfish applicants longer than the EQP to make this harvest. The result is that the unavoidable circumstances provision is not available to an applicant seeking a groundfish endorsement that requires only one harvest in the EQP. Those endorsements are: Aleutian Islands; Bering Sea; Western Gulf, vessels less than 60 feet; Central Gulf, vessels less than 60 feet; Southeast Outside, vessels 125 feet or greater; Southeast Outside, vessels less than 60 feet. 50 C.F.R. § 679.4(k)(4)(ii)(A), (B), (C)(4), (D)(3), (E)(1), (E)(3).

²⁰ Final Rule, 63 Fed. Reg. 52,642, 52,651 (1998).

²¹ Mr. Donovick states that he purchased the F/V ST. DOMINICK in 1996. Since the F/V ST. DOMINICK did not harvest *opilio* or *bairdi* after the F/V ROUGHNECK sank but before June 17, 1995, I do not decide whether Mr. Donovick would have had to own the F/V ST. DOMINICK on June 17, 1995 to receive credit for a harvest under the unavoidable circumstances regulation.

1. The F/V ROUGHNECK meets the requirement in the general qualification period in federal regulation 50 C.F.R. § 679.5(k)(5)(i) for an LLP crab license.
2. The F/V ROUGHNECK does not meet the requirement in the endorsement qualification period in federal regulation 50 C.F.R. § 679.5(k)(5)(ii)(B) for an LLP crab license with an *opilio/bairdi* endorsement.
3. Mr. Donovanick does not meet the requirements for an LLP crab license with an *opilio/bairdi* endorsement in federal regulation 50 C.F.R. § 679.4(k)(5), based on the fishing history of the F/V ROUGHNECK.
4. Mr. Donovanick does not meet the requirements for an LLP crab license based on the lost vessel regulation at 50 C.F.R. § 679.5(k)(8)(iii) because that regulation requires that the lost vessel – the F/V ROUGHNECK – have met all the requirements for an LLP license *before* it sank.
5. Mr. Donovanick does not meet the requirements for an LLP crab license with an *opilio/bairdi* endorsement based on the unavoidable circumstance regulation because that regulation at 50 C.F.R. § 679.5(k)(8)(iv)(E) requires that a replacement vessel make an *opilio* or *bairdi* harvest in BSAI after the original vessel sank but before June 17, 1995.
6. Mr. Donovanick is not eligible to receive an LLP license with an *opilio/bairdi* endorsement.

DISPOSITION

The portion of the IAD that denied Mr. Donovanick's application for an LLP crab license [IAD 02-0002] is AFFIRMED. This Decision takes effect October 28, 2002, 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, October 7, 2002. 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 of points and authorities in support of the motion.

Mary Alice McKeen
Appeals Officer