

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 02-0041
)	
CHARLES REHDER,)	DECISION
Appellant)	
)	August 1, 2005
_____)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program of the National Marine Fisheries Service (NMFS) issued an Initial Administrative Determination (IAD) on July 31, 2002, that denied Charles Rehder's application for a groundfish license, with two endorsements, under the North Pacific Groundfish and Crab License Limitation Program (LLP). Mr. Rehder claimed area endorsements for the Bering Sea and Central Gulf of Alaska groundfish fisheries, based on the fishing history of his vessel, the F/V KUSTATAN (ADF&G No. 60210; USCG No. 959432), a catcher vessel with a length overall of 100 feet.

The IAD approved Mr. Rehder's application for an LLP crab license, also premised on the fishing history of the F/V KUSTATAN. The IAD provided that the LLP groundfish license (LLG4599) and LLP crab license (LLC3340) issued to Mr. Rehder would remain in an interim (non-transferable) status pending final agency action on his application.¹

Mr. Rehder filed a timely appeal of the IAD.² He can file an appeal because the IAD directly and adversely affects his interests.³ We ordered an oral hearing to determine whether Mr. Rehder qualifies for a Central Gulf of Alaska area endorsement on his LLP groundfish license under the unavoidable circumstance provision in the LLP regulations. The hearing did not address Mr. Rehder's claim to a Bering Sea area endorsement because we have concluded, as a matter of law, that he cannot qualify for that endorsement. This office does not order hearings on factual issues that are not determinative with regard to the relief sought.⁴

The hearing was held on May 27, 2005. Testifying at the hearing via telephone from Homer,

¹RAM issued a second IAD on August 15, 2002, which determined that Mr. Rehder's groundfish license (LLG4599) could not be endorsed for Pacific cod with hook-and-line or pot gear in the Bering Sea and Aleutian Islands (BSAI). Mr. Rehder did not appeal the August 15 IAD.

²Mr. Rehder filed his appeal of the July 31, 2002, IAD two weeks after the appeal deadline, but we accepted Appellant's appeal as timely filed due to the apparent confusion caused by issuance of the August 15, 2002, IAD. This appeal was filed within 60 days after the issuance of the second IAD.

³50 C.F.R § 679.43(b).

⁴50 C.F.R. § 679.43(g)(3)(iv).

Alaska, were Mr. Rehder, the owner of the F/V KUSTATAN; his wife, Debra Rehder; and Raymond Bellamy, the former owner of the vessel. Attorney C. Michael Hough of Homer represented Mr. Rehder. The hearing was recorded on an audiocassette tape.

ISSUES

1. Does Mr. Rehder qualify for an LLP groundfish license with a Bering Sea area endorsement based on an “unavoidable circumstance” under 50 C.F.R. §679.4(k)(8)(iv) of the LLP regulations?
2. Does Mr. Rehder qualify for an LLP groundfish license with a Central Gulf of Alaska area endorsement based on an “unavoidable circumstance” under 50 C.F.R. §679.4(k)(8)(iv) of the LLP regulations?

SUMMARY

Mr. Rehder claims that the F/V KUSTATAN would have made the requisite documented harvests to qualify for an LLP groundfish license with area endorsements for the Bering Sea and Central Gulf of Alaska but for a series of “unavoidable circumstances”: the collapse of a crane on his vessel and unexpected engine repairs in 1994, and the failure and replacement of the vessel’s main engines in 1995.

As a matter of law, an applicant can never qualify for an LLP groundfish license with a Bering Sea area endorsement on the basis of an unavoidable circumstance. The Bering Sea endorsement requires only one documented harvest of LLP groundfish in that area during the period January 1, 1992 through June 17, 1995. Mr. Rehder does not meet this documented harvest requirement because his vessel made *no* documented harvests of LLP groundfish in the Bering Sea subarea during that period. Therefore, Mr. Rehder also cannot meet an essential requirement of an unavoidable circumstance claim – that his vessel must have made at least one documented harvest of LLP groundfish in the appropriate regulatory area after the unavoidable circumstance occurred but before June 17, 1995. If Mr. Rehder had met this unavoidable circumstance documented harvest requirement, he also would have met the documented harvest requirement for the endorsement, and would not have needed to avail himself of the unavoidable circumstance provision of 50 C.F.R. §679.4(k)(8)(iv). The unavoidable circumstance provision does not apply in a claim for a Bering Sea area endorsement. Thus, Mr. Rehder does not qualify for an LLP groundfish license with a Bering Sea area endorsement.

Mr. Rehder does not qualify for an LLP groundfish license with a Central Gulf of Alaska area endorsement based on an unavoidable circumstance claim. A crane collapse and engine repairs in 1994, and an engine failure in January 1995, did not cause Mr. Rehder’s failure to make the requisite documented harvests of LLP groundfish in the Central Gulf. Thus, they did not thwart Mr. Rehder’s alleged specific intent to fish for Pacific cod in the Central Gulf of Alaska in 1994 or 1995. The engine problems following the 1995 opilio crab season did not result in an engine failure, and did not meet several basic requirements of the unavoidable circumstance regulation. Therefore, Mr. Rehder does not qualify for an LLP groundfish license with a Central Gulf area

endorsement under 50 C.F.R. §679.4(k)(8)(iv). The IAD that is the subject of this appeal is AFFIRMED.

ANALYSIS

To qualify for an LLP groundfish license with a Bering Sea area endorsement, Mr. Rehder must establish that the F/V KUSTATAN made a documented harvest of groundfish in the BSAI or Gulf of Alaska during the general qualification period (GQP) for the fishery, January 1, 1988, through June 27, 1992.⁵ He must also demonstrate that the vessel made a documented harvest of groundfish in the Bering Sea subarea during the endorsement qualification period (EQP) for the fishery, January 1, 1992, through June 17, 1995.⁶

To qualify for an LLP groundfish license with a Central Gulf of Alaska area endorsement, Mr. Rehder must establish that the F/V KUSTATAN made a documented harvest of groundfish in the BSAI or Gulf of Alaska during the general qualification period (GQP), January 1, 1988, through June 27, 1992.⁷ He must also demonstrate that the vessel made either (1) two documented harvests of groundfish in the Central Gulf, one per year during any two years between January 1, 1992, and June 17, 1995,⁸ or (2) four documented harvests of groundfish in the Central Gulf between January 1, 1995, and June 17, 1995.⁹

According to the IAD, the F/V KUSTATAN met the GQP requirement, but not the EQP requirements for either of the requested endorsements. On appeal, Mr. Rehder concedes that the F/V KUSTATAN's fishing history does not meet the EQP requirements, but he claims that the vessel would have met the EQP requirements but for "unavoidable circumstances," and that he therefore qualifies for both the Bering Sea and Central Gulf of Alaska area endorsements.

To qualify for the endorsements based on "unavoidable circumstances," Mr. Rehder must first establish that the F/V KUSTATAN made a documented harvest of groundfish (in the BSAI or Gulf of Alaska) between January 1, 1988, and February 9, 1992.¹⁰ Then he must satisfy all of the remaining criteria in the unavoidable circumstance provision of 50 C.F.R. §679.4(k)(8) in the LLP regulations.¹¹ To satisfy all of the criteria under that provision, an applicant must

⁵50 C.F.R. § 679.4(k)(4)(i)(A)(1). *See also*, §679.4(k)(4)(iv).

⁶50 C.F.R. § 679.4(k)(4)(ii)(B).

⁷50 C.F.R. § 679.4(k)(4)(i)(B)(1). *See also*, §679.4(k)(4)(v).

⁸50 C.F.R. § 679.4(k)(4)(ii)(I).

⁹50 C.F.R. § 679.4(k)(4)(ii)(J).

¹⁰50 C.F.R. § 679.4(k)(8)(iv).

¹¹In this decision, we determined that Mr. Rehder did not satisfy all of the criteria in the unavoidable circumstance of 50 C.F.R. §679.4(k)(8). Therefore, we did not determine whether the F/V

demonstrate that:

(A) the applicant had a specific intent at the time of an alleged unavoidable circumstance use a vessel to harvest LLP groundfish during a specific time period in specific area;

(B) the applicant's specific intent to harvest LLP groundfish was thwarted by a circumstance that was unavoidable, unique, and unforeseen and reasonably unforeseeable to the applicant;

(C) the circumstance that prevented the applicant's vessel from harvesting the LLP groundfish actually occurred;

(D) the applicant took reasonable steps to overcome the circumstance that prevented the applicant's vessel from harvesting LLP groundfish; and

(E) the applicant's vessel made at least one documented harvest of LLP groundfish in the specific area (that corresponds to the endorsement area for which the applicant is applying) after the unavoidable circumstance, but before June 17, 1995.¹²

1. Does Mr. Rehder qualify for an LLP groundfish license with a Bering Sea area endorsement based on an "unavoidable circumstance" under 50 C.F.R. §679.4(k)(8) of the LLP regulations?

Mr. Rehder claims that the F/V KUSTATAN would have made a documented harvest of Pacific cod (an LLP groundfish) in the Bering Sea but for a series of unavoidable circumstances: a crane collapse on the vessel around March 15, 1994; unexpected engine repairs on April 1, 1994, and August 9, 1994; problems with one of the vessel's engines in the Bering Sea on January 20, 1995; and the replacement of both of the vessel's main engines between March 14, 1995, and April 15, 1995.¹³

The Bering Sea endorsement requires only one documented harvest of LLP groundfish in that area during the period January 1, 1992, through June 17, 1995. An unavoidable circumstance claim requires, among other things, that the applicant's vessel must have made a documented harvest of LLP groundfish in the appropriate regulatory area after the unavoidable circumstance

KUSTATAN met the threshold requirement of a documented harvest of groundfish between January 1, 1988, and February 9, 1992.

¹²50 C.F.R. § 679.4(k)(8)(iv).

¹³Charles Rehder affidavit (Dec. 3, 1999); Debra Rehder affidavit (March 31, 2002); and C. Michael Hough letter to Philip J. Smith (Oct. 14, 2002).

occurred, but before June 17, 1995.¹⁴ Any applicant who meets this unavoidable circumstance requirement necessarily would have made the requisite documented harvest to qualify for the Bering Sea area endorsement without recourse to the unavoidable circumstance provision. Conversely, any applicant who does not meet the documented harvest requirement for a Bering Sea area endorsement also will not meet the documented harvest requirement of an unavoidable circumstance claim. We therefore conclude as a matter of law that no applicant can ever qualify for an LLP groundfish license with a Bering Sea area endorsement on the basis of an unavoidable circumstance. The unavoidable circumstance provision of 50 C.F.R. §679.4(k)(8)(iv) simply does not apply in a claim for a Bering Sea area endorsement.¹⁵ Thus, Mr. Rehder cannot qualify for an LLP groundfish license with a Bering Sea area endorsement.

2. Does Mr. Rehder qualify for an LLP groundfish license with a Central Gulf of Alaska area endorsement based on an “unavoidable circumstance” under 50 C.F.R. §679.4(k)(8) of the LLP regulations?

A. The vessel crane collapse and engine repairs in 1994

The NMFS official LLP record shows that the F/V KUSTATAN made only one documented harvest of LLP groundfish in the Central Gulf of Alaska during the EQP, January 1, 1992, through June 17, 1995. That was a Pacific cod harvest on March 22, 1995. Mr. Rehder claims that the F/V KUSTATAN would have made an additional documented harvest of Pacific cod in 1994, and would have qualified for a Central Gulf of Alaska area endorsement under 50 C.F.R. §679.4(k)(4)(ii)(I), but for a crane collapse on the vessel on or about March 15, 1994, and emergency engine repairs on April 1, 1994, and August 9, 1994.

The 1994 Pacific cod fishery in the Central Gulf of Alaska closed the day after the crane collapsed, and was already closed when the vessel’s engine had to undergo emergency repairs.¹⁶ Therefore, even if these claimed unavoidable circumstances had not occurred, it would have been impossible for the F/V KUSTATAN to make any lawful harvests of Pacific cod in the Central Gulf of Alaska during the remainder of 1994. Thus, we find that Mr. Rehder’s claimed intent to make a documented harvest of Pacific cod in the Central Gulf of Alaska in 1994 was not, in fact, thwarted by the crane’s collapse and engine repairs in 1994. Consequently, we conclude that the claimed unavoidable circumstances in 1994 do not meet the requirements of 50 C.F.R. §679.4(k)(8)(iv)(B) and do not qualify Mr. Rehder for an LLP groundfish license with a Central Gulf of Alaska area endorsement.

B. Engine problems of the F/V KUSTATAN in 1995

Alternatively, Mr. Rehder claims that the F/V KUSTATAN would have made at least three more

¹⁴50 C.F.R. § 679.4(k)(8)(iv)(E).

¹⁵*Bowlden, Inc.*, Appeal No. 02-0037 (July 7, 2004).

¹⁶The Pacific cod fishery closed on March 16, 1994. See the NMFS Alaska Region website <<http://www.fakr.noaa.gov/sustainablefisheries/closure.html>>

documented harvests of Pacific cod in the Central Gulf of Alaska between January 1 and June 17, 1995, but for a series of unavoidable circumstances that occurred between the close of the Bering Sea opilio crab season (February 17, 1995) and the close of the Pacific cod season in the Central Gulf of Alaska (March 22, 1995). He claims that, if these circumstances had not occurred, he would have qualified for the Central Gulf of Alaska area endorsement under 50 C.F.R. §679.4(k)(4)(ii)(J). We will now analyze his claimed unavoidable circumstances for 1995.

1) Engine problems during the 1995 opilio crab season

Mr. Rehder testified that one of F/V KUSTATAN's engines "overheated" in the Bering Sea during the opilio crab season, on or about January 20, 1995. He stated that he had parts flown in from Anchorage to make the engine "good enough to continue fishing for opilio crab." Mr. Rehder testified that, at the time the engine failed, he had intended to fish for Pacific cod in the Central Gulf of Alaska after the opilio crab season. The NMFS official LLP record shows that the F/V KUSTATAN made several documented harvests of opilio crab¹⁷ after he had the engine fixed and before the close of the fishery on February 17, 1995.

Based on Mr. Rehder's testimony, we find that the engine problems that occurred aboard the F/V KUSTATAN, on or about January 20, 1995, could not have thwarted Mr. Rehder's intent to fish for Pacific cod in the Central Gulf. The engine was repaired before the period of time in which he said he intended to participate in the fishery. Thus, it cannot reasonably be said that these engine problems and repairs interfered with or thwarted Mr. Rehder's intent to fish for Pacific cod in the Central Gulf of Alaska in 1995. We conclude, therefore, that this claimed unavoidable circumstance does not meet the requirements of 50 C.F.R. §679.4(k)(8)(iv)(B) and does not qualify Mr. Rehder for an LLP groundfish license with a Central Gulf of Alaska area endorsement.

2) Engine problems after the 1995 opilio crab season

Mr. Rehder testified that, after the opilio crab season ended on February 17, 1995, the vessel's engine was "still not working as it should have." He stated that he then decided to take the vessel to Homer, Alaska, to have the engine inspected and, if necessary, repaired or replaced, instead of going directly to the Central Gulf to fish for cod. He testified that the trip to Homer took "six or seven days" due to an "ice storm." Mr. Rehder testified that when the F/V KUSTATAN arrived in Homer, on or about February 24, 1995, both of the vessel's engines needed repair. He said he was uncertain whether to go fishing in the Gulf of Alaska at all, and that he spent several days deciding what to do about the vessel's engines.

Mr. Rehder has submitted a letter, dated March 2, 1995, from an engine repair shop in Homer, which estimated the cost of rebuilding or replacing the vessel's engines, and stated that it would

¹⁷The vessel made the opilio crab harvests on January 24 and 30, and February 9 and 17, 1995.

take at least two weeks to ship and install new engines.¹⁸ On March 6, 1995, Mr. Rehder made a down payment of \$8,140 towards the purchase of two new engines.¹⁹ On March 14, 1995, he paid the balance of the purchase price, and had welding and assembly work done to prepare the vessel for the installation of the new engines.²⁰ On March 15, 1995, Mr. Rehder acquired a federal fisheries permit to fish for groundfish in the Central Gulf.²¹ On March 16, 1995, he purchased supplies for a groundfish fishing trip.²²

On March 19, 1995, the F/V KUSTATAN departed for the Central Gulf fishing grounds.²³ On March 22, 1995, the vessel made its only documented harvest of Pacific cod in the Central Gulf. That was the last day the fishery was open in 1995.²⁴ On that same day, Mr. Rehder paid to have the new engines shipped to Anchorage via Seattle.²⁵ The engines were installed on or about April 10, 1995, almost three weeks after the March 22, 1995, closure of the Central Gulf of Alaska Pacific cod fishery.²⁶

Mr. Rehder asserts that the start of the F/V KUSTATAN's fishing in the Central Gulf was delayed by at least 10 days due to the engine problems. He testified that his vessel could have made the three additional documented harvests required for a Central Gulf area endorsement in the time it took him to have the engines inspected and to decide to replace the engines. In effect, Mr. Rehder is arguing that taking reasonable steps to *prevent* an engine failure from occurring should be considered an unavoidable circumstance under 50 C.F.R. §679.4(k)(8)(iv), even though the engine failure never actually occurred.

In *Wizard Fisheries, Inc.*, we concluded that a “*vessel-related* unavoidable circumstance” must be beyond the control of the vessel owner or license holder; it must involve loss, damage, or

¹⁸Letter to Charles Rehder from Christopher B. Ball of Machine & Diesel (March 2, 1995).

¹⁹\$8,140 check to Pacific Detroit Diesel from Charles Rehder (March 6, 1995).

²⁰\$46,156 check to Pacific Detroit Diesel from Charles Rehder (March 14, 1995), and the \$463 invoice to Charles Rehder from Bay Welding Services (March 14, 1995).

²¹\$82 invoice to Charles Rehder from Rickey and Associates for “expedited federal fisheries permit (March 15, 1995).

²²\$247.37 receipt for groceries from SAVE-U-MORE, Homer, Alaska (March 16, 1995).

²³Alaska Department of Fish & Game fish ticket, #G95016504, for the F/V KUSTATAN (March 22, 1995), which shows the vessel departed for the Central Gulf of Alaska on March 19, 1995.

²⁴*Id.*, which shows that the F/V KUSTATAN made a delivery of Pacific cod in Homer on March 22, 1995.

²⁵\$1,510 check from Charles Rehder to Bay Welding for “freight on motors” (March 22, 1995).

²⁶*See* the \$5,720.20 check from Charles Rehder to Bay Welding for the installation of the new engines (April 10, 1995).

breakdown of the vessel or its gear or equipment; and it must remove or seriously impair the vessel's pre-existing capability to meet the landing requirements for the endorsement sought.²⁷ We stated that the North Pacific Fishery Management Council (Council) conceived of an unavoidable circumstance as a sudden and catastrophic event, such as a vessel sinking or grounding, a catastrophic fire, a catastrophic engine failure, or similar disastrous events or acts of God.²⁸ Furthermore, the unavoidable circumstance regulation requires that the circumstance must have been unforeseen and reasonably unforeseeable by the vessel owner, and must have actually occurred, and that the vessel must have been unable to participate in the LLP groundfish fisheries.²⁹

The circumstance claimed by Mr. Rehder lacks all of these characteristics. First, it was not unavoidable because deciding whether and when to have the vessel's engines inspected, and repaired or replaced, and whether and when to enter the Central Gulf Pacific cod fishery, were matters *entirely* within Mr. Rehder's control.

Second, the evidence that Mr. Rehder produced shows that the F/V KUSTATAN did not have an actual engine breakdown or catastrophic engine failure after the opilio crab season ended on February 17, 1995. The vessel traveled from the Bering Sea to Homer without any engine repairs. The engines were inspected while in Homer, but they were not repaired or replaced before the vessel left to go fishing in the Central Gulf on March 19, 1995. The evidence in the record is that no work was performed on the vessel's engines until April 10, 1995, when they were replaced with new engines. We presume, therefore, that the engines were in the same condition when the vessel fished in the Central Gulf as they had been when the vessel left the Bering Sea on February 17 and when the vessel pulled in to Homer on February 24. Thus, at no point during the period of time in question here was there an actual engine breakdown or failure.

Third, Mr. Rehder has not shown that the engines' problems made the vessel incapable of meeting the landing requirements for the Central Gulf area endorsement. The fact that the F/V KUSTATAN made a documented harvest of Pacific cod in the Central Gulf on March 22, 1995, shows that the vessel was still capable of harvesting and landing groundfish until the end of the season, despite the engine problems and without having the engines repaired or replaced.

Fourth, the very fact that Mr. Rehder thought it necessary to have the vessel's engines inspected before proceeding to the Central Gulf fishery demonstrates that the potential for engine failure was not unforeseen or reasonably unforeseeable to him. Although Mr. Rehder may well have acted reasonably and prudently by taking the time to have his engines inspected, that in itself does not constitute an unavoidable circumstance under 50 C.F.R. §679.4(k)(8)(iv).

²⁷Appeal No. 03-0004 at 11-12 (March 3, 2005).

²⁸*Id.* at 12, citing *Alaska Trojan Partnership*, Appeal No. 01-0001 at 32-33 (Oct. 20, 2003). *See also*, Transcript of NPFMC meeting at 69-71, 151-152 (June 16-17, 1995).

²⁹50 C.F.R. §679.4(k)(8)(iv) and (iv)(C).

Mr. Rehder did not show that his actions prevented a catastrophic engine failure. Even if he had shown that, we would not find that he qualifies for relief under the unavoidable circumstance provision. We believe the regulation was intended to provide relief only to those who were the unfortunate victims of an actual, sudden, and catastrophic event that rendered their vessel unable to participate in the fishery.³⁰ Those who anticipate a catastrophe and manage to avert it have, by definition, not suffered an unavoidable circumstance.

We conclude that the circumstance claimed by Mr. Rehder is not an unavoidable circumstance within the meaning of 50 C.F.R. §679.4(k)(8)(iv). We conclude, therefore, that he does not qualify under 50 C.F.R. §679.4(k)(8)(iv) for a transferable LLP groundfish license with a Central Gulf area endorsement.

FINDINGS OF FACT

We make the following findings of fact by a preponderance of the evidence in the administrative record:

1. An applicant who made a documented harvest of LLP groundfish in the appropriate regulatory area after the unavoidable circumstance occurred but before June 17, 1995, as required by 50 C.F.R. §679.4(k)(8)(iv)(E), necessarily would have made the requisite documented harvest to qualify for the Bering Sea area endorsement without recourse to the unavoidable circumstance provision. Conversely, any applicant who does not meet the documented harvest requirement for a Bering Sea area endorsement also will not meet the documented harvest requirement of an unavoidable circumstance claim.
2. Mr. Rehder's claimed intent to make a documented harvest of Pacific cod in the Central Gulf of Alaska in 1994 was not, in fact, thwarted by the crane collapse and engine repairs in 1994.
3. The engine problems that occurred aboard the F/V KUSTATAN, on or about January 20, 1995, and subsequent repairs did not interfere with or thwart Mr. Rehder's intent to fish for Pacific cod in the Central Gulf of Alaska in 1995.
4. Mr. Rehder's decisions about whether and when to have the F/V KUSTATAN's engines inspected, and repaired or replaced, and whether and when to enter the Central Gulf Pacific cod fishery, were matters *entirely* within his control and, therefore, they were not unavoidable.
5. The F/V KUSTATAN did not have an actual engine breakdown or catastrophic engine failure

³⁰We are referring here only to a *vessel-related* unavoidable circumstance, not a situation in which the vessel owner, skipper, or crew member suffers a sudden illness or injury that prevents them from participating in a fishery, which we have recognized can be an unavoidable circumstance. *See, e.g., Wizard Fisheries, Inc.*, Appeal No. 03-0004 at 12, n. 46 (March 3, 2005): "An 'unavoidable circumstance' can also pertain to an impairment of the vessel owner, skipper, or crew. This is suggested by the requirement that the unavoidable circumstance be unique to the vessel or unique to the license holder." *See* 50 C.F.R. §679.4(k)(8)(iv)(B)(2) and §679.4(k)(9)(v)(B)(1)(ii).

after the opilio crab season ended on February 17, 1995.

6. Mr. Rehder has not shown that the engines' problems made the F/V KUSTATAN incapable of meeting the landing requirements for the Central Gulf area endorsement. The vessel was still capable of harvesting and landing groundfish until the end of the 1995 season, despite the engine problems and without having the engines repaired or replaced.

7. The potential for engine failure on the F/V KUSTATAN in February and March 1995 was not unforeseen or reasonably unforeseeable to Mr. Rehder.

CONCLUSIONS OF LAW

1. No applicant can ever qualify for an LLP groundfish license with a Bering Sea area endorsement on the basis of an unavoidable circumstance. The unavoidable circumstance provision of 50 C.F.R. §679.4(k)(8)(iv) simply does not apply in a claim for a Bering Sea area endorsement.

2. Mr. Rehder does not qualify for an LLP groundfish license with a Bering Sea area endorsement based on an "unavoidable circumstance" under 50 C.F.R. §679.4(k)(8).

3. The claimed unavoidable circumstances in 1994 do not meet the requirements of 50 C.F.R. §679.4(k)(8)(iv)(B) and do not qualify Mr. Rehder for an LLP groundfish license with a Central Gulf of Alaska area endorsement.

4. The engine problems that occurred aboard the F/V KUSTATAN, on or about January 20, 1995, do not meet the requirements of 50 C.F.R. §679.4(k)(8)(iv)(B) and do not qualify Mr. Rehder for an LLP groundfish license with a Central Gulf of Alaska area endorsement.

5. The inspection and replacement of the F/V KUSTATAN's engines in February and March 1995, and the delay those actions caused, are not unavoidable circumstances within the meaning of 50 C.F.R. §679.4(k)(8)(iv).

3. Mr. Rehder does not qualify for an LLP groundfish license with a Central Gulf of Alaska area endorsement based on an "unavoidable circumstance" under 50 C.F.R. §679.4(k)(8)(iv).

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on August 31, 2005, 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 August 11, 2005, the tenth day after this Decision. 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.

Randall J. Moen
Administrative Judge

Edward H. Hein
Chief Administrative Judge