

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 06-0007
)	
MICHAEL R. PERRY,)	DECISION
Appellant)	
_____)	July 18, 2008

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program of the National Marine Fisheries Service (NMFS) issued an Initial Administrative Determination (IAD) on March 21, 2006, that denied Mr. Perry’s application for catcher vessel crew Quota Share (QS) in the Bering Sea snow crab and Bristol Bay red king crab fisheries under the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (CRP). RAM denied the application because the official Crab Rationalization Record¹ does not show that he made the required legal landings for the QS.

Mr. Perry filed a timely appeal of the IAD. His interests are directly and adversely affected by the IAD, as required by 50 C.F.R. § 679.43(b). He does not request an oral hearing, nor is oral hearing authorized in this case because there is no genuine and substantial issue of adjudicative fact for resolution at a hearing, as required by 50 C.F.R. §679.43(g)(3)(i). The record contains sufficient information to decide this appeal, and therefore the record is now closed. 50 C.F.R. §679.43(g)(2).

ISSUE

Does Mr. Perry qualify for catcher vessel crew QS in the Bering Sea snow crab and Bristol Bay red king crab fisheries under the CRP?

¹ The “official Crab Rationalization Record” is defined in 50 C.F.R § 680.2 as “the information prepared by the Regional Administrator [of NMFS] about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.” According to RAM, the “official Crab Rationalization Record” is a comprehensive data base that contains relevant information on the BSAI crab fisheries, including permit holder and fish ticket landing files, processing information, and other data required for properly assigning harvesting and processing histories to qualified persons and calculating the amounts of QS and Processor QS to which they are entitled. The information in the official CRP record is derived from a variety of sources, including the Alaska Department of Fish and Game, the Commercial Fisheries Entry Commission, the Alaska Department of Revenue, and NOAA Fisheries Service (NMFS). [General Guidelines for Preparing Applications, BSAI Crab Rationalization - “Instructions for Applying for QS and PSQ” - April 2005].

ANALYSIS

To qualify for catcher vessel crew QS in the **Bering Sea snow crab fishery**, Mr. Perry must demonstrate that he made a legal landing of Bering Sea snow crab in three of the five base period crab seasons: January 15 - February 29, 1996; January 15 - March 21, 1997; January 15 - March 20, 1998; January 15 - March 22, 1999; and April 1 - 8, 2000; and in two of the three recent participation crab seasons: April 1 - 8, 2000; January 15 - February 14, 2001; and January 15 - February 8, 2002.²

To qualify for catcher vessel crew QS in the **Bristol Bay red king crab fishery**, Mr. Perry must demonstrate that he made at least one legal landing of Bristol Bay red king crab in three of the five base period crab seasons: November 1 - 5, 1996; November 1 - 5, 1997; November 1 - 6, 1998; October 15 - 20, 1999; and October 16 - 20, 2000; and in two of the three recent participation crab seasons: October 15 - 20, 1999; October 16 - 20, 2000; and October 15 - 18, 2001.³

RAM states,⁴ and Mr. Perry acknowledges on his application,⁵ that he did not make the requisite legal landings (during two of the three recent participation seasons) for crab QS in the Bering Sea snow crab fishery or the Bristol Bay red king crab fishery. I find that Mr. Perry did not make the requisite legal landings of crab to qualify for catcher vessel crew crab QS in the Bering Sea snow crab fishery or the Bristol Bay red king crab fishery under the CRP.

On appeal, Mr. Perry claims that he would have made the requisite legal landings for both Bering Sea snow crab QS and Bristol Bay red king crab QS, but that the fisheries could no longer financially sustain him and he had to fish in other areas to make a living.⁶ Mr. Perry states that he has spent the better part of his life fishing for crab and does not have a viable economic alternative without crab QS.

Even if Mr. Perry's claims are true, the CRP regulations do not provide a hardship exception or special circumstance exception to the landing requirements for catcher vessel crew QS, other

² 50 C.F.R. §§ 680.40(b)(1)(ii) and 680.40(b)(3)(iii)(B) and (C); columns C and D, Table 7 to Part 680 - Initial Issuance of QS by Crab QS Fishery.

³ *Id.*

⁴ IAD at 2.

⁵ Mr. Perry stated on his application that he made legal landings of Bering Sea snow crab in 2000, but not during 2001 or 2002; and legal landings of Bristol Bay red king crab in 1999, but not during 2000 or 2001.

⁶ Appeal pleading (Mar. 30, 2006).

than for persons who died while working as part of a harvesting crew.⁷ Therefore, Mr. Perry cannot qualify for the QS he seeks on appeal based on hardship or special circumstances. I conclude that Mr. Perry does not qualify for catcher vessel crew QS in the Bering Sea snow crab fishery or the Bristol Bay red king crab fisheries under the CRP.

FINDING OF FACT

Mr. Perry did not make the requisite legal landings of crab to qualify for catcher vessel crew crab QS in the Bering Sea snow crab fishery or the Bristol Bay red king crab fishery under the CRP.

CONCLUSIONS OF LAW

1. Mr. Perry cannot qualify for the QS he seeks on appeal based on hardship or special circumstances.
2. Mr. Perry does not qualify for catcher vessel crew QS in the Bering Sea snow crab fishery or the Bristol Bay red king crab fisheries under the CRP.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect August 18, 2008, unless by that date the Regional Administrator takes further action 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 July 28, 2008, 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 Administrative Judge, and must be accompanied by a written statement in support of the motion.

Randall J. Moen
Administrative Judge

⁷ 50 C.F.R. § 680.40(b)(3)(iii)(C)(2).