

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0006
)	
MICHAEL R. HANSEN)	
F/V SEA QUAIL)	DECISION
ADF&G # 02304)	
Appellant)	
_____)	November 30, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on February 29, 1996, the Restricted Access Management (RAM) Program¹ denied Mr. Hansen's application for a Vessel Moratorium Qualification and Permit for the F/V SEA QUAIL as an "original qualifying vessel" under the Vessel Moratorium Program because its records did not show that the F/V SEA QUAIL made crab or groundfish landings during the moratorium qualifying period, January 1, 1988, through February 9, 1992. RAM issued Mr. Hansen an interim Vessel Moratorium Permit for the F/V SEA QUAIL to fish moratorium crab and moratorium groundfish with pot gear, pending a request for reconsideration or an appeal by Mr. Hansen.

In response to the IAD, Mr. Hansen filed a timely appeal with this Office. In his appeal, Mr. Hansen acknowledged that the F/V SEA QUAIL did not make crab or groundfish landings until after the moratorium qualifying period in late 1992. He claims that an exception to the qualifying period should be made because the vessel's crab landings were not timely made in 1992 due to "inclement weather," because the F/V SEA QUAIL has pot fished king crab and Tanner crab in the Kodiak and Bering Sea areas, and because he and his family have used the vessel for over 30 years and his family's livelihood is in "serious jeopardy" without moratorium rights.

Because the record contains sufficient information on which to reach a final decision, and because there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered. 50 C.F.R. § 679.43.

ISSUE

Is the F/V SEA QUAIL entitled to a Vessel Moratorium Qualification and Permit, based on hardship or special circumstances?

¹The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 10 Sep 97].

PRINCIPLES OF LAW

1. To obtain a Vessel Moratorium Qualification and Permit to fish for “moratorium crab” or “moratorium groundfish” as an “original qualifying vessel” under the Vessel Moratorium Program, the vessel must have made at least one legal landing of moratorium crab or moratorium groundfish, between January 1, 1988, and February 9, 1992. 50 C.F.R. § 679.4(c)(7)(i).
2. “Moratorium crab” means king or Tanner crab harvested in the Bering Strait/Aleutian Islands [while commercial fishing under federal regulations]. 50 C.F.R. § 679.2.
3. “Moratorium groundfish” means species of groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in the Bering Sea/Aleutian Islands while commercial fishing under federal regulations. 50 C.F.R. § 679.2.
4. An “original qualifying vessel” means a vessel that made a legal landing during the qualifying period. 50 C.F.R. § 679.2.

DISCUSSION

The evidence in the record shows that the F/V SEA QUAIL did not make landings of moratorium crab or moratorium groundfish during the qualifying moratorium period of January 1, 1988, through February 9, 1992. Mr. Hansen cites special circumstances, (inclement weather, his past history as a fisherman, and financial hardship) as a basis for granting his vessel moratorium rights. The regulations, however, do not provide for such relief. The F/V SEA QUAIL did not make qualifying moratorium landings. Therefore, the vessel is not an “original qualifying vessel,” and therefore it is not entitled to a Vessel Moratorium Qualification and Permit to fish moratorium crab and moratorium groundfish.

FINDING OF FACT

The F/V SEA QUAIL did not make landings of moratorium crab or moratorium groundfish between January 1, 1988, and February 9, 1992.

CONCLUSIONS OF LAW

1. The regulations of the Vessel Moratorium Program do not provide for a Vessel Moratorium Qualification and Permit to be issued to a vessel based on financial hardship or special circumstances.
2. The F/V SEA QUAIL is not an “original qualifying vessel,” and therefore it is not entitled to a Vessel Moratorium Qualification and Permit to fish moratorium crab and moratorium groundfish.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on December 30, unless by that date the Regional Administrator orders the review of the decision.

Any party, including 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 December 10, 1999, the tenth day after the date of 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 or points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the decision, pending a ruling on the motion or the issuance of a Decision on Reconsideration.

Randall J. Moen
Appeals Officer