

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0021
)	
JEFF STEELE)	
F/V OBSESSION)	DECISION
ADF&G # 34374)	
Appellant)	
_____)	November 29, 1999

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on Reconsideration on June 4, 1996, which denied Mr. Steele an endorsement to harvest moratorium groundfish with hook gear on his vessel moratorium qualification and permit under the Vessel Moratorium Program on Groundfish and Crab.¹ 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 Mr. Steele entitled to an endorsement to harvest moratorium groundfish with hook gear on a vessel moratorium qualification and permit based on the landings of the F/V OBSESSION?

BACKGROUND

Jeff Steele filed an application for a vessel moratorium qualification and permit on December 18, 1995. Mr. Steele's application claimed that the F/V OBSESSION had landed moratorium crab and groundfish with pot and hook gear in period 1 (January 1, 1988 to February 9, 1992) and moratorium crab and groundfish with pot gear in period 2 (February 10, 1992 to December 11, 1994).

¹ The Vessel Moratorium Program for Groundfish and Crab, 50 C.F.R. § 679.4(c), expires on December 31, 1999. This program should not be confused with the North Pacific License Limitation Program (LLP), 50 C.F.R. § 679.4(k). Effective January 1, 2000, a license limitation permit will be necessary to harvest certain species of groundfish in the Gulf of Alaska and Bering Sea and Aleutian Islands areas and certain species of crab in the Bering Sea and Aleutian Islands area. The application period for LLP is from September 13, 1999 through December 17, 1999. For further information on LLP, Mr. Steele may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2). NMFS's website at "<http://www.fakr.noaa.gov>" also information on LLP.

RAM's Official Record for the Moratorium Program shows that the F/V OBSESSION is a qualified vessel and that the landings from the F/V OBSESSION entitle Mr. Steele to a moratorium qualification and permit with endorsements to harvest crab and groundfish with pot gear. The Official Record does not indicate that Mr. Steele is entitled to an endorsement to harvest moratorium groundfish with hook gear.

RAM made an Initial Administration Determination on February 23, 1996 that Mr. Steele was not entitled to an endorsement to harvest groundfish with hook gear. The IAD states that the RAM database did not show landings of moratorium crab or moratorium groundfish from the F/V OBSESSION with hook gear between January 1, 1988 and February 9, 1992.

On April 18, 1996, Mr. Steele asked RAM to reconsider its decision. He stated that the F/V OBSESSION was used by the previous owner Jerry Matson and Huffman & Hills for halibut fishing in the Central Gulf in 1987 to 1989. On reconsideration, RAM again denied Mr. Steele an endorsement to harvest moratorium groundfish with hook gear because he did not provide documentation of the landings necessary for the groundfish/hook gear endorsement and because halibut is not a moratorium groundfish. RAM referred the case to this Office for filing as an appeal.

Mr. Steele wrote to this Office that he believed the F/V OBSESSION used hooks to catch halibut in 1987 to 1989 when Jerry Matson and Huffman & Hills owned the boat. Mr. Steele asked if this Office could look at the fish tickets from the prior owner to make sure there was no groundfish caught as halibut bycatch. Mr. Steele stated that he had been unable to get information from the prior owner due to a financial dispute.

DISCUSSION

The Moratorium Program limits fishing for moratorium groundfish and moratorium crab species through December 31, 1999. Moratorium groundfish species are groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in the Bering Sea and Aleutian Islands areas.² Moratorium crab species are Tanner and king crab harvested in the Bering Sea and Aleutian Islands area.³

To receive an endorsement to harvest moratorium groundfish with hook gear on a Vessel Moratorium Qualification and Permit, Mr. Steele must show that the F/V OBSESSION made

[1] a legal landing of moratorium groundfish with hook, trawl or pot gear in the Bering Sea and Aleutian Islands area (BSAI) or the Gulf of Alaska (GOA) in period 1, which is January 1, 1988 to February 9, 1992,

² 50 C.F.R. § 679.2.

³ *Id.*

OR

[2] a legal landing of moratorium crab in BSAI or the Gulf of Alaska (GOA) in period 1 (January 1, 1988 to February 9, 1992) and a legal landing of moratorium groundfish with hook gear in BSAI or GOA in period 2, which is February 10, 1992 to December 11, 1994.⁴

The Official Record does not show that Mr. Steele has the landings necessary for an endorsement to harvest moratorium groundfish with hook gear. The Official Record shows that Mr. Steele had the landings necessary for an endorsement to harvest moratorium crab and moratorium groundfish with pot gear. That means that the Official Record shows that the F/V OBSESSION made landings of moratorium crab in period 1 (January 1, 1988 to February 9, 1992).⁵ But the Official Record does not show that Mr. Steele landed any moratorium groundfish with any gear (trawl, hook or pot) in period 1 or moratorium groundfish with hook gear in period 2. Thus the Official Record does not show, and Mr. Steele has not submitted any evidence that shows, that he is entitled to an groundfish/hook gear endorsement on his moratorium qualification and permit.

Mr. Steele claimed in his request for reconsideration to RAM that the F/V OBSESSION made halibut landings in 1987 to 1989. It is only landings in 1988 and 1989 that could conceivably assist Mr. Steele⁶ but these must be landings of moratorium species and RAM correctly noted that halibut is not a moratorium species.⁷ Thus, even if the F/V OBSESSION made landings of halibut with hook gear in 1988 to 1989, that does not entitle Mr. Steele to a groundfish/hook gear endorsement.

Mr. Steele then stated in his Appeal that the F/V OBSESSION may have landed halibut with hook gear and may have landed moratorium groundfish as part of its halibut bycatch. For a landing to support Mr. Steele's entitlement to a groundfish/hook gear endorsement, it must be a legal landing.⁸ A legal landing is one made in compliance with Federal and state commercial fishing regulations in effect at

⁴ 50 C.F.R. § 679.4(c)(5)(i).

⁵ That is the only pattern of landings that entitles an applicant to these two gear endorsements and no others. *See* 50 C.F.R. § 679.4(c)(5)(i),(iii).

⁶ Landings in 1987 are before period 1 (January 1, 1988 to February 9, 1992) and period 2 (February 10, 1992 to December 11, 1994). 50 C.F.R. § 679.4(c)(5).

⁷ Although the first proposed regulations for the Moratorium Program included halibut as a moratorium fishery, the second proposed and the final regulations excluded halibut as a moratorium species. *See* Proposed Rule, 59 Fed. Reg. 28,827, 28,828 (1994); Proposed Rule, 60 Fed. Reg. 25,677, 25,678 (1995); Final Rule, 60 Fed. Reg. 40,763, 40,764 (1995).

⁸ 50 C.F.R. § 679.4(c)(5).

the time of the landing.⁹ All legal landings must be reported and documented in a fish ticket, whether the landing is made as targeted fishing or as a bycatch from fishing for another species.¹⁰

RAM's Official Record for the Moratorium Program does not itself contain landings histories. RAM created its Official Record for the Moratorium Program based on information obtained from the North Pacific Fisheries Management Council. Council staff reviewed landings histories and prepared a list of the vessels it concluded were qualified and what endorsements the vessels should receive.¹¹ This Office does not have available for review generally the landings histories that formed the basis for the Official Record of the Moratorium Program. This Office does not have a waiver from the prior owner of this vessel to obtain information on this specific vessel.

Although this Office cannot review the landings history of the F/V OBSESSION, it was reviewed by staff of the North Pacific Fisheries Management Council. In the context of the Moratorium Program, the mere possibility that a prior owner of a vessel may have landed halibut with hook gear and may have landed moratorium groundfish as bycatch while landing halibut and that this landing may have been mistakenly omitted from the Official Record when Council staff reviewed the vessel's landing history is not sufficient to justify a hearing or any further efforts by this Office to obtain additional information on the vessel's landing history.¹²

Therefore I conclude that Mr. Steele is not entitled to an endorsement to harvest moratorium groundfish with hook gear on his vessel moratorium qualification or permit.

FINDING OF FACT

The F/V OBSESSION did not make the landings of moratorium crab or groundfish necessary for an endorsement to harvest groundfish with hook gear on a vessel moratorium qualification and permit.

⁹ 50 C.F.R. § 679.2.

¹⁰ See 05 AAC 39.130(b).

¹¹ Memorandum (e-mail) from Phil Smith, RAM Program Director, to Mary Alice McKeen, September 28, 1999.

¹² The Moratorium Program has two features relevant to this conclusion. First, it is about to expire – on December 31, 1999. Second, the inability of either Mr. Steele or this Office to review the landings history of the F/V OBSESSION did not prevent Mr. Steele from participating in the moratorium fisheries because he received an interim moratorium permit with the gear endorsements he requested, which is valid until final agency action on his appeal. See 50 C.F.R. § 679.4(c)(11).

CONCLUSION OF LAW

Mr. Steele is not entitled to an endorsement to harvest groundfish with hook gear on a vessel moratorium qualification and permit based on the landings of the F/V OBSESSION.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect December 27, 1999, unless by that date the Regional Administrator orders 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 the tenth day after this Decision, December 9, 1999. 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.

Mary Alice McKeen
Appeals Officer