

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 96-0041
	)	
ROGER WALLING	)	DECISION
F/V PACIFIC STORM	)	
ADF&G # 54979	)	September 27, 1999
Appellant	)	
_____	)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on Reconsideration on June 6, 1996, which denied Mr. Walling's application for a Vessel Moratorium Qualification and Permit (VMQ&P) under the Vessel Moratorium Program on Groundfish and Crab.<sup>1</sup> The Reconsideration affirmed RAM's earlier IAD of February 28, 1996. Both IADs concluded that Mr. Walling was not eligible to receive a Vessel Moratorium Qualification or Permit. The basis for both IADs was that Mr. Walling did not show that his vessel had made any landings of moratorium species between January 1, 1988 and February 9, 1992.

ISSUE

Does Mr. Walling's vessel, the F/V PACIFIC STORM, have moratorium qualification under the Vessel Moratorium Program on Groundfish and Crab?

BACKGROUND

Mr. Walling filed an application for a Vessel Moratorium Qualification and Permit on February 5, 1996. He claimed he had fished moratorium groundfish with hook gear in period 1 (January 1, 1988 through February 9, 1992) and period 2 (February 10, 1992 through December 11, 1994). For

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<sup>1</sup> The Vessel Moratorium Program for Groundfish and Crab is found at 50 C.F.R. § 679.4(c). The program was extended through December 31, 1999 and will expire on that date. *See* 64 Fed. Reg. 3651-3653 (January 24, 1999). This Decision applies only to this program – the Moratorium Program – and not any other programs dealing with participation in these fisheries. **Specifically, this dismissal does not apply to the North Pacific License Limitation Program (LLP), which is found at 50 C.F.R.**

**§ 679.4(k).** The LLP applies to fishing for certain species of groundfish in the Gulf of Alaska and Bering Straits/Aleutian Islands areas and certain species of crab in the Bering Sea/Aleutian Islands areas. The application period for LLP runs from September 13, 1999 through December 17, 1999. For further information on the License Limitation Program, Mr. Walling may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2).

period 1, Mr. Walling's application specified that the fish he had landed in period 1 was halibut. RAM determined in its IAD of February 28, 1996 that Mr. Walling had not shown any landings that would enable his vessel to qualify for the moratorium program. Mr. Walling requested that RAM reconsider its decision. He submitted three copies of fish tickets showing landings of salmon with drift net gear in Southeast Alaska. In its Initial Administrative Determination on Reconsideration on June 6, 1996, RAM denied Mr. Walling's claim because he had only shown landings of salmon, not moratorium groundfish species. RAM then referred this case to the Office of Administrative Appeals for filing as an appeal.

## DISCUSSION

The Vessel Moratorium Program on Groundfish and Crab only limits fishing for certain species of crab in the Bering Straits and Aleutian Islands (BSAI) and certain species of groundfish in the Gulf of Alaska (GOA) and BSAI. The moratorium species of crab are Tanner and King Crab harvested in BSAI.<sup>2</sup> The moratorium groundfish species are groundfish, except sablefish caught with fixed gear, harvested in the GOA or BSAI<sup>3</sup> Salmon and halibut are not moratorium species.

A vessel is qualified to participate in the Vessel Moratorium Program on Groundfish and Crab if it had landings of moratorium species between January 1, 1998 and February 9, 1992.<sup>4</sup> Mr. Walling's application states that he participated in the halibut fishery. The fish tickets he submitted show participation in the Southeast Alaska salmon drift gillnet fishery. Neither RAM's Official Record nor the evidence submitted by Mr. Walling show that he has ever made any landings of moratorium crab or moratorium groundfish. Therefore I conclude that Mr. Walling's vessel, the F/V PACIFIC STORM, is not entitled to receive moratorium qualification based on landings.

This Decision does not affect Mr. Walling's ability to participate in the halibut and salmon fisheries because the Vessel Moratorium for Groundfish and Crab does not govern those fisheries.

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<sup>2</sup> 50 C.F.R. § 670.2 (definition of moratorium crab species).

<sup>3</sup> Moratorium groundfish species means "species of groundfish, except sablefish caught with fixed gear, harvested in the GOA or in the BSAI, the commercial fishing of which is governed by this part." 50 C.F.R. § 670.(2). Groundfish means "target species and the 'other species' category, specified annually pursuant to § 670.20(a)(2)." *Id.* Pursuant to 50 C.F.R. § 670.20(a)(2), NMFS, after consultation with the North Pacific Fisheries Management Council, sets annual total allowable catch (TAC) and reserves for certain species of fish. The TAC figures are published annually in the Federal Register. Salmon and halibut are not specified as groundfish under this process. *See, e.g.*, 55 Fed. Reg. 3223 - 3229 (January 31, 1990) (1990 fishing year); 56 Fed. Reg. 6290 - 6296 (February 15, 1991)(1991 fishing year).

<sup>4</sup> 50 C.F.R. § 679.4(c)(7)(i). A vessel can also obtain moratorium qualification by transfer, which is not at issue here. *See* 50 C.F.R. § 679.4(c)(ii).

## FINDING OF FACT

No legal landings of moratorium species between January 1, 1988 and February 9, 1992 were made from Mr. Walling's vessel, the F/V PACIFIC STORM.

## CONCLUSION OF LAW

Mr. Walling's vessel, the F/V PACIFIC STORM, is not entitled to receive a moratorium qualification.

## DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect October 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, October 7, 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.

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Mary Alice McKeen  
Appeals Officer