

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0076
)
DAN DOAK,) DECISION
Appellant)
_____) October 25, 1999

STATEMENT OF THE CASE

On May 28, 1996, Dan Doak applied for a Vessel Moratorium Permit under the Vessel Moratorium Program on Groundfish and Crab¹ for the F/V KODIAK as an “original qualifying vessel.” In an Initial Administrative Determination (IAD) dated June 7, 1996, the Restricted Access Management (RAM) Program² determined that the vessel was not an original qualifying vessel because the vessel did not make qualifying landings of a moratorium species between January 1, 1988, and February 9, 1992. RAM told Mr. Doak that he could ask for reconsideration of the IAD, and issued him an interim Vessel Moratorium Permit. Mr. Doak challenged the IAD, and filed a copy of his CFEC³ landings history from the F/V KODIAK between 1988 and 1994. On August 14, 1996, RAM deemed Mr. Doak’s evidence insufficient, and affirmed the IAD in an IAD on Reconsideration. RAM referred this case to this Office for filing as an appeal.

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 KODIAK an original qualifying vessel under the Vessel Moratorium Program on Groundfish and Crab?

PRINCIPLES OF LAW

¹See, 50 C.F.R. § 679.4(c).

²The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 10 Sep 97].

³The abbreviation for the State of Alaska Commercial Fisheries Entry Commission.

To obtain a vessel moratorium permit for an “original qualifying vessel”⁴ under the regulations of the Vessel Moratorium Program, the vessel must have made at least one legal landing of a moratorium species (groundfish or crab) between January 1, 1988, and February 9, 1992. 50 C.F.R. § 679.4(c)(7). Pacific halibut and sablefish are not considered “moratorium species,” for purposes of qualifying a vessel for a moratorium permit under the Vessel Moratorium Program. 50 C.F.R. § 679.4(c)(3).

DISCUSSION

When Mr. Doak applied for a Vessel Moratorium Permit for the F/V KODIAK, he claimed that the vessel was an original qualifying vessel. RAM denied the application because its records showed that the vessel did not make legal landings of a moratorium species until June 1992, after the qualifying period. Mr. Doak submitted records of his CFEC fish ticket history to RAM, but the reports show that he did not make moratorium landings from the F/V KODIAK until November 1992. The vessel made halibut and sablefish landings during the qualifying period, but neither fish is a moratorium species under the Vessel Moratorium Program.

In a letter to RAM requesting reconsideration, Mr. Doak states that he firmly believed at the time he purchased the F/V KODIAK that it would qualify for a Vessel Moratorium Permit. He claims that the broker and seller of the vessel, and other fishermen, told him that the vessel would qualify when he purchased the vessel, and that NMFS⁵ also told him in 1991 that “any groundfish would qualify” for a moratorium permit. Mr. Doak assumed that this meant that his sablefish and halibut landings would qualify the vessel for the permit.

The Vessel Moratorium Program is governed by federal regulations, and not by assumptions of Appellants or alleged representations of sellers, brokers, fishermen, and NMFS employees. The regulations require moratorium species to be landed from original qualifying vessels between January 1, 1988, and February 2, 1992. The regulations also provide that halibut and sablefish are not moratorium species. The preponderance of the evidence shows that no legal landings of a moratorium species were made from the vessel during the qualifying period. In light of this, I conclude that the F/V KODIAK is not an original qualifying vessel under the Vessel Moratorium Program on Groundfish and Crab.

FINDING OF FACT

⁴Under 50 C.F.R. § 679.2, an “original qualifying vessel” means a vessel that is not otherwise exempt, and that made legal commercial landings of moratorium crab or groundfish species during the qualifying period (January 1, 1988, to February 9, 1992).

⁵The abbreviation for the National Marine Fisheries Service.

No legal landings of a moratorium species were made from the F/V KODIAK during the vessel moratorium qualifying period, January 1, 1988, to February 2, 1992.

CONCLUSION OF LAW

The F/V KODIAK is not an “original qualifying vessel” under the Vessel Moratorium Program on Groundfish and Crab.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect on November 24, 1999, 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., on November 4, 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