

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0078
)
DENNIS EAMES,) DECISION
Appellant)
_____) November 1, 1999

STATEMENT OF THE CASE

On June 28, 1996, Dennis Eames applied for a Vessel Moratorium Permit under the Vessel Moratorium Program on Groundfish and Crab¹ for the F/V TALIA. In an Initial Administrative Determination (IAD) dated July 10, 1996, the Restricted Access Management (RAM) Program² determined that the vessel qualified for moratorium groundfish endorsements, but that it did not qualify for a moratorium crab with pot gear endorsement. RAM told Mr. Eames that he could ask for reconsideration of the IAD, and issued an interim Vessel Moratorium Permit to him to fish crab with pot gear, and to fish groundfish with hook, pot, and trawl gear. Mr. Eames challenged the IAD, submitting a state of Alaska fish ticket for the harvest of crab aboard the F/V TALIA in Stephens Passage on February 22, 1991, and a state of Alaska fish ticket for the landing of groundfish from the vessel on September 14, 1990. On September 9, 1996, RAM determined that the fish tickets were insufficient evidence, and affirmed the IAD in an IAD on Reconsideration. RAM referred this case to this Office for filing as an appeal. No other evidence was submitted by Mr. Eames.

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 TALIA entitled to a Vessel Moratorium Permit to fish moratorium crab with pot gear under the Vessel Moratorium Program?

PRINCIPLES OF LAW

To obtain a Vessel Moratorium Permit to fish moratorium crab with pot gear under the Vessel Moratorium Program, the "original qualifying vessel" must have made at least (1) one legal landing of moratorium crab between January 1, 1988, and February 9, 1992; (2) one landing of moratorium

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].

groundfish between January 1, 1988, and February 9, 1992, and at least one landing of moratorium crab between February 10, 1992, and December 11, 1994; or (3) one landing of moratorium groundfish with pot gear between January 1, 1988, and February 9, 1992. Moratorium crab species are king and Tanner crab harvested in the Bering Sea and Aleutian Islands area. Moratorium groundfish species are groundfish, except sablefish caught with fixed gear and halibut, harvested in the Gulf of Alaska area or the Bering Sea and Aleutian Islands area.

DISCUSSION

When Mr. Eames applied for a Vessel Moratorium Permit for the F/V TALIA, RAM determined that its records showed that the vessel qualified for an endorsement to fish moratorium groundfish, but not moratorium crab. Mr. Eames submitted two fish tickets to show that the vessel qualified for a Vessel Moratorium Permit to fish moratorium crab. One fish ticket shows crab landings only in Southeast Alaska. The other fish ticket shows only groundfish landings with longline gear. Mr. Eames in fact claimed only that the vessel had used hook gear on his application for a Vessel Moratorium Permit. Because the evidence in the record does not show that the F/V TALIA made moratorium crab landings or landings of moratorium groundfish harvested with pot gear during the qualifying period, I conclude that the vessel's Vessel Moratorium Permit should not be given an endorsement to fish moratorium crab.

FINDING OF FACT

The F/V TALIA did not make moratorium crab landings, or moratorium groundfish landings with pot gear, between January 1, 1988, and February 9, 1992.

CONCLUSION OF LAW

The Vessel Moratorium Permit issued for the F/V TALIA should not be given an endorsement to fish moratorium crab.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect on December 1, 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 12, 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