

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 97-0005
)
STEPHEN KURTH,) DECISION
Appellant)
_____) November 1, 1999

STATEMENT OF THE CASE

On December 2, 1996, Stephen Kurth applied for a Vessel Moratorium Permit under the Vessel Moratorium Program on Groundfish and Crab¹ for the F/V SHINAKU. In an Initial Administrative Determination (IAD) dated December 10, 1996, the Restricted Access Management (RAM) Program² determined that the vessel did not qualify for a Vessel Moratorium Permit. RAM granted Mr. Kurth's request for reconsideration and issued an interim Vessel Moratorium Permit to him. On May 14, 1997, RAM affirmed the IAD in an IAD on Reconsideration, on grounds that Mr. Kurth had provided insufficient evidence of his claims. 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 SHINAKU entitled to a Vessel Moratorium Permit under the Vessel Moratorium Program on Groundfish and Crab?

PRINCIPLES OF LAW

To obtain a vessel moratorium permit for an "original qualifying vessel"³ under the regulations of the Vessel Moratorium Program, the vessel must have made at least one legal landing of moratorium species (groundfish or crab) between January 1, 1988, to February 9, 1992. Pacific halibut, and

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].

³Under 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).

sablefish harvested with fixed gear, are not considered "moratorium species," for purposes of qualifying for a Vessel Moratorium Permit under the Vessel Moratorium Program. 50 C.F.R. § 679.4(c)(3).

DISCUSSION

RAM denied Mr. Kurth's application for a Vessel Moratorium Permit for the F/V SHINAKU because its records did not show that the vessel made at least one legal landing of a moratorium species during the qualifying period. In a letter to RAM,⁴ Mr. Kurth claimed that while he had no fish tickets or landings reports, the vessel did qualify for a Vessel Moratorium Permit because the vessel made halibut and sablefish landings, and other groundfish landings, during the relevant periods. Mr. Kurth stated that Seward Fisheries could verify his claim.

The record does not contain documentation (in the form of state fish tickets, fish processor records, or state landings reports, etc.) showing moratorium groundfish or crab landings from the F/V SHINAKU during the qualifying period. And, even if it is true that halibut and sablefish landings were made from the vessel, neither fish is a moratorium species under the Vessel Moratorium Program. Mr. Kurth's assertion is the only evidence in the record that these or "other groundfish" landings were made. In light of this, the preponderance of the evidence shows that moratorium groundfish or crab landings were not made from the F/V SHINAKU during the qualifying period. As a result, the vessel is not qualified for a Vessel Moratorium Permit under the Vessel Moratorium Program.

FINDING OF FACT

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

CONCLUSION OF LAW

The F/V SHINAKU 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 December 1, 1999, unless by that date the Regional Administrator orders the review of the Decision.

⁴See, the letter to RAM dated December 18, 1996.

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