

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

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| In re Application of |) | Appeal No. 97-0015 |
| |) | |
| DONALD L. PARKER |) | |
| F/V MARMOT FOX |) | DECISION |
| ADF&G # 60859 |) | |
| Appellant |) | |
| _____ |) | October 25, 1999 |

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on March 28, 1997, which denied Mr. Parker's claim for a crab endorsement 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.²

ISSUE

Is Mr. Parker entitled to an endorsement to harvest moratorium crab on his Vessel Moratorium Qualification and Permit?

BACKGROUND

Donald Parker filed an application for a Vessel Moratorium Qualification and Permit on March 25, 1997 with the Restricted Access Management program. Mr. Parker's application claimed that he made landings of moratorium crab and groundfish from the F/V MARMOT FOX with pot and hook gear in period 1 (January 1, 1988 to February 9, 1992) and period 2 (February 10, 1992 to December

¹ The Vessel Moratorium Program for Groundfish and Crab is found at 50 C.F.R. § 679.4(c) and expires on December 31, 1999. This program should not be confused with the North Pacific License Limitation Program (LLP) which is found at 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 the License Limitation Program, Mr. Parker may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2).

² 50 C.F.R. § 679.43.

11, 1994). With the application, Mr. Parker submitted a February 1994 bill of sale of the F/V MARMOT FOX from Charles E. Lewis Jr. to Donald Parker, both of Kodiak, Alaska. The sale transferred 100% of the vessel, including “any future rights, privileges and entitlements appertaining to the VESSEL for the use and operation of said VESSEL as a Catcher and/or Processor.” Mr. Parker also submitted a subsequent bill of sale for the vessel from Donald Parker to Donald and Faatupu Parker.

RAM’s Official Record for the Moratorium Program showed that Mr. Parker was entitled to a Moratorium Qualification and Permit with endorsements to harvest moratorium groundfish with hook, trawl and pot gear. The Official Record did not indicate, however, that Mr. Parker was entitled to an endorsement to harvest moratorium crab species.³

RAM made an Initial Administration Determination on March 28, 1997 that Mr. Parker was not entitled to a crab endorsement. The IAD stated that the RAM database did not show landings of moratorium crab species with pot gear from the F/V MARMOT FOX between January 1, 1988 and February 9, 1992. RAM sent Mr. Parker an interim moratorium permit with the gear endorsements he requested, but the IAD told Mr. Parker that the interim permit would expire on May 28, 1997, unless by that date he either asked RAM to reconsider its decision or appealed RAM’s decision to this Office.

On June 30, 1997, Mr. Parker wrote to RAM that he did not reply in time because he had been contacting the previous owner of the F/V MARMOT FOX “to get copies of the original fish tickets proving the gear and species used during the period of (1/1/88 through 2/9/92).” He sent RAM copies of four fish tickets showing landings of Tanner crab with pot gear in Kodiak in January 1994. RAM’s file contains notes that a RAM permit assistant spoke to Mr. Parker about his letter on July 7, 1997 and that Mr. Parker said he would withdraw his claim for a crab endorsement. RAM did not receive such a notice from Mr. Parker and referred the case to this Office for filing as an appeal.

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

³ RAM’s Official Record for the Moratorium Program did 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. The Council staff reviewed landings histories and prepared a list of the vessels it concluded were qualified and what endorsements the applicants should receive. RAM adopted the Council’s determinations as part of its Official Record for the Moratorium Program. [Memorandum (e-mail) from Phil Smith, RAM Program Director, to Mary Alice McKeen, September 28, 1999.]

gear, harvested in the Gulf of Alaska or in the Bering Sea and Aleutian Islands areas.⁴ Moratorium crab species are Tanner and king crab harvested in the Bering Sea and Aleutian Islands area.⁵

To receive a crab endorsement on a Vessel Moratorium Qualification and Permit, federal regulation 50 C.F.R. § 679.4(c)(5)(i) requires that an applicant must show one of the following:

[1] a legal landing of moratorium crab species in the Bering Sea and Aleutian Islands area (BSAI) in period 1, which is January 1, 1988 to February 9, 1992,

OR

[2] a legal landing of moratorium groundfish species in BSAI or the Gulf of Alaska (GOA) in period 1 (January 1, 1988 to February 9, 1992) and a legal landing of moratorium crab species in BSAI in period 2, which is February 20, 1992 to December 11, 1994,

OR

[3] a legal landing of moratorium groundfish species with pot gear in GOA or BSAI in period 1 (January 1, 1988 to February 9, 1992).

The Official Record does not show that Mr. Parker has the landings necessary for a crab endorsement. Neither does the evidence submitted by Mr. Parker. Mr. Parker does not show any landings of crab in the Bering Sea and Aleutian Islands area or any landings of groundfish with pot gear in BSAI or the Gulf of Alaska. The fish tickets submitted by Mr. Parker show landings of Tanner crab in Kodiak, which is in the Gulf of Alaska. Therefore I conclude that Mr. Parker is not entitled to an endorsement to harvest crab on his Vessel Moratorium Qualification or Permit.

The record suggests that Mr. Parker understandably, but mistakenly, believed that the Moratorium Program regulated crab fishing in the Gulf of Alaska. The record also suggests that continued participation in that fishery was his concern. The Moratorium Program does not regulate crab fishing in the Gulf of Alaska. This Decision therefore does not affect Mr. Parker's ability to participate in that fishery.

FINDING OF FACT

The F/V MARMOT FOX did not make the landings of moratorium crab or groundfish necessary for a crab endorsement on his Vessel Moratorium Qualification and Permit.

⁴ 50 C.F.R. § 679.2.

⁵ *Id.*

CONCLUSION OF LAW

Mr. Parker is not entitled to a crab endorsement on his Vessel Moratorium Qualification and Permit.

DISPOSITION

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