

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 00-0007
)	
JEFFREY MURRAY)	
F/V SOUTHWIND,)	DECISION
ADF&G # 48510)	
Appellant)	
)	June 21, 2001
)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) Program issued an Initial Administrative Determination (IAD) that denied Mr. Murray’s application for a groundfish license under the North Pacific Groundfish and Crab License Limitation Program (LLP), based on the qualifying fishing history of the F/V SOUTHWIND. The IAD denied the application because it was untimely filed.

Mr. Murray filed a timely appeal of the IAD. Mr. Murray’s interests are directly and adversely affected by the IAD. Because Mr. Murray held a Vessel Moratorium Qualification under the Vessel Moratorium Program, RAM issued a non-transferable interim LLP license to him, pending the resolution of his appeal. An oral hearing was not held because the record contains sufficient information on which to reach a final decision.

ISSUE

Did Mr. Murray timely apply for an LLP license?

DISCUSSION

RAM is not authorized to accept an application for an LLP crab or groundfish license that is postmarked or delivered after the date specified in the Federal Register for the LLP application period. 50 C.F.R. § 679.4(k)(6)(I). RAM is required to send an LLP application form to the last known address of a person identified as an eligible applicant by the official LLP record. An application form may be requested from RAM. *Id.* An “eligible applicant” for an LLP license is a person who owned a vessel on June 17, 1995, from whom the minimum number of documented harvests were made in the qualifying periods under 50 C.F.R. § 679.4(k)(4) and (5). *See* 50 C.F.R. § 679.2.

Mr. Murray filed an application for an LLP groundfish license¹ on January 24, 2000, more than

¹The LLP took effect on January 1, 2000. *See* 63 Fed. Reg. 52642-52657.

one month after the December 17, 1999, LLP application deadline.²

On appeal, Mr. Murray claims that he was never sent an LLP application and that he would have applied before the deadline if he had known that the F/V SOUTHWIND qualified him for an LLP license. He claims that RAM told him after the application deadline that he would have qualified for an LLP groundfish license, based on Pacific cod harvests made from the vessel between 1988 and 1995.

I contacted RAM, who told us that the official LLP record does not show the F/V SOUTHWIND has qualifying fishing history.³ Therefore, RAM was not required to send an LLP application form to Mr. Murray before the application deadline because he was not an “eligible applicant” for an LLP license.

Even if RAM told Mr. Murray after the deadline that the vessel qualified him for an LLP license, it would not excuse him from filing an LLP application before the deadline. RAM may not accept an LLP application after the application deadline, unless the circumstances show that the deadline may be “equitably tolled.”⁴ Mr. Murray does not claim, nor does the record on appeal show, that Mr. Murray was disabled or incompetent during the LLP application period. Therefore, the LLP application deadline may not be equitably tolled in this case.

Because Mr. Murray filed his LLP application after the application deadline, I conclude that he did not timely apply for an LLP license, and that he is not entitled to have RAM accept his LLP application for processing.

FINDINGS OF FACT

1. Mr. Murray applied for an LLP license after the application deadline, based on the fishing history of the F/V SOUTHWIND.
2. The official LLP record does not show that the F/V SOUTHWIND has qualifying fishing history.

²The LLP application period was between September 13, 1999, and December 17, 1999. *See* 64 Fed. Reg. 49104 (1999).

³*See* the memorandum (e-mail) from Tracy Buck to Randall Moen, November 1, 2000. *See* 50 C.F.R. § 679.4(k)(4) and (5) for the requirements of a qualifying vessel for an LLP groundfish license.

⁴The doctrine of equitable tolling permits an administrative agency, under limited circumstances, to toll the running of a federal application period while an applicant is suffering from a disability or incompetency that prevents the person from complying with the application deadline requirements. *See, e.g., John T. Coyne*, Appeal No. 94-0012 (Decision on Reconsideration), May 24, 1996, at 13.

3. Mr. Murray was not disabled or incompetent during the LLP application period.

CONCLUSIONS OF LAW

1. RAM was not required to send Mr. Murray an LLP application form before the application deadline.

2. Even if RAM told Mr. Murray after the deadline that the fishing history of the F/V SOUTHWIND qualified him for an LLP license, it does not excuse him from filing an LLP application before the deadline.

3. Mr. Murray is not entitled to have the deadline for filing a LLP application “equitably tolled.”

4. Mr. Murray did not timely file an LLP application and he is not entitled to have RAM accept his LLP application for processing.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect July 23, 2001, 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, July 3, 2001. 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.

Randall J. Moen
Appeals Officer