

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 96-0028  
)  
WILLIAM DeSHONG )  
F/V PREDATOR ) DECISION  
ADF&G # 51438 )  
Appellant )  
\_\_\_\_\_ ) November 10, 1999

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on Reconsideration on June 6, 1996, which denied Mr. DeShong a crab endorsement on his Vessel Moratorium Qualification and Permit under the Vessel Moratorium Program on Groundfish and Crab.<sup>1</sup> 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.<sup>2</sup> RAM referred Mr. DeShong's case to this Office for filing as an appeal.

ISSUE

Is Mr. DeShong entitled to an endorsement to harvest moratorium crab on his vessel moratorium qualification and permit?

BACKGROUND

William DeShong filed an application for a vessel moratorium qualification and permit on January 16, 1996. Mr. DeShong's application claimed that he made landings of moratorium crab and groundfish

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<sup>1</sup> **The Vessel Moratorium Program for Groundfish and Crab, 50 C.F.R. § 679.4(c), expires on December 31, 1999. This program should not be confused with the North Pacific License Limitation Program (LLP), 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 (BSAI) areas and Tanner and king crab in BSAI. The application period for LLP is from September 13, 1999 through December 17, 1999. For further information on the License Limitation Program, Mr. DeShong may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2). The NMFS website at "<http://www.fakr.noaa.gov>" also has information on LLP.**

<sup>2</sup> 50 C.F.R. § 679.43.

from the F/V PREDATOR with pot and hook gear in period 1 (January 1, 1988 to February 9, 1992) and period 2 (February 10, 1992 to December 11, 1994).

RAM's Official Record for the Moratorium Program showed that Mr. DeShong 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. DeShong was entitled to an endorsement to harvest moratorium crab species.<sup>3</sup> RAM issued an IAD on February 23, 1996 that Mr. DeShong 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 PREDATOR between January 1, 1988 and February 9, 1992.

On March 11, 1996, Mr. DeShong asked RAM to reconsider its decision. He submitted a copy of a fish ticket showing a Tanner crab landing made for Icicle Seafoods, Homer, Alaska. The landing was made on a State of Alaska limited entry fishing permit to harvest Tanner crab with pot gear in Cook Inlet. On reconsideration, RAM concluded that Mr. DeShong should not receive a crab endorsement because he had not shown he had landed Tanner or king crab in the Bering Sea and Aleutian Islands area.

## 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 gear, harvested in the Gulf of Alaska or in the Bering Sea and Aleutian Islands area. Moratorium crab species are Tanner and king crab harvested in the Bering Sea and Aleutian Islands area.<sup>4</sup>

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 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,

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<sup>3</sup> 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. 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, Sept. 28, 1999.]

<sup>4</sup> 50 C.F.R. § 679.2.

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. DeShong is entitled to a crab endorsement. Neither does the evidence submitted by Mr. DeShong. Mr. DeShong does not show any landings of Tanner or king crab in BSAI or any landings of groundfish with pot gear in BSAI or the Gulf of Alaska. The fish ticket Mr. DeShong submitted is incomplete. It does not show where the Tanner crab was landed. But the crab was sold to a Homer company on a Cook Inlet permit. Homer is located on Kachemak Bay. Both Kachemak Bay and Cook Inlet are in the Gulf of Alaska area, not BSAI. Therefore I conclude that Mr. DeShong has not shown that he is entitled to an endorsement to harvest crab on his vessel moratorium qualification or permit.

#### FINDING OF FACT

Mr. DeShong did not make the landings of moratorium crab or groundfish from the F/V PREDATOR which are necessary for a crab endorsement on his vessel moratorium qualification and permit.

#### CONCLUSION OF LAW

Mr. DeShong 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 December 10, 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 22, 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.

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Mary Alice McKeen  
Appeals Officer