

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 98-0005  
)  
JAMES D. MONROE )  
F/V CAPE LOOKOUT ) DECISION  
ADF&G # 38748 )  
Appellant )  
\_\_\_\_\_ ) November 30, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on April 15, 1998, the Restricted Access Management (RAM) Program<sup>1</sup> denied Mr. Monroe's application for a Vessel Moratorium Qualification and Permit for the F/V CAPE LOOKOUT as an "original qualifying vessel" under the Vessel Moratorium Program. RAM denied the application because its records did not show that the vessel made moratorium groundfish or moratorium crab landings during the period of January 1, 1988, through February 9, 1992. RAM told Mr. Monroe that he needed to provide state fish tickets to verify his claim. RAM issued Mr. Monroe an interim Vessel Moratorium Permit for the F/V CAPE LOOKOUT to fish moratorium crab and moratorium groundfish, pending a request for reconsideration or an appeal by Mr. Monroe.

Mr. Monroe requested reconsideration of the IAD, and submitted (1) two state of Alaska fish tickets for halibut landed from the F/V CAPE LOOKOUT in 1990 and 1992; (2) six state of Alaska fish tickets for crab landed from the F/V CAPE LOOKOUT between 1988 and 1992; and (3) a letter dated July 13, 1998, from Charles Jensen, stating that he had witnessed Mr. Monroe deliver "various fishery products" (which included halibut, true cod, crab, and Pacific cod) to East Point Seafoods in Kodiak, Alaska.

On August 19, 1998, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM concluded that Mr. Monroe's evidence was insufficient because the fish tickets showed that the F/V CAPE LOOKOUT made crab landings from harvests made in the Central Gulf of Alaska, and not in the BS/AI.

On October 26, 1998, RAM issued a revised IAD on Reconsideration, which determined that the F/V CAPE LOOKOUT also did not qualify for a Vessel Moratorium Qualification and Permit to fish moratorium groundfish. Mr. Monroe did not submit for the record any evidence of groundfish landings

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<sup>1</sup>The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 10 Sep 97].

from the F/V CAPE LOOKOUT.

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 CAPE LOOKOUT entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium crab and moratorium groundfish?

## PRINCIPLES OF LAW

1. To obtain a Vessel Moratorium Qualification and Permit to fish “moratorium crab” or “moratorium groundfish” as an “original qualifying vessel” under the Vessel Moratorium Program, the vessel must have made at least one legal landing of moratorium crab or moratorium groundfish, between January 1, 1988, and February 9, 1992. 50 C.F.R. § 679.4(c)(7)(i).
2. “Moratorium crab” means king or Tanner crab harvested in the Bering Strait/Aleutian Islands [while commercial fishing under federal regulations]. 50 C.F.R. § 679.2.
3. “Moratorium groundfish” means species of groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in the BS/AI, while commercial fishing under federal regulations. 50 C.F.R. § 679.2.
4. An “original qualifying vessel” means a vessel that made a legal landing during the moratorium qualifying period of January 1, 1988, through February 9, 1992. 50 C.F.R. § 679.2.

## DISCUSSION

Mr. Monroe’s evidence, and RAM’s records, do not show that the F/V CAPE LOOKOUT made crab landings from harvests in BS/AI, or that the vessel made groundfish landings, during the moratorium qualifying period of January 1, 1988, through February 9, 1992. While Mr. Monroe’s fish tickets show that halibut and crab landings were made from the vessel during the moratorium qualifying period, halibut is not moratorium groundfish, and crab harvested outside BS/AI is not moratorium crab. Mr. Jensen’s statement that he witnessed groundfish delivered to East Point Seafoods is not supported by state fish tickets or information in RAM’s records. Nor is the letter, by itself, credible or reliable evidence of the landings of the fish. But, if the landings did occur, state fish tickets were required for those landings. Absent state fish tickets, the letter is insufficient evidence of legal landings of moratorium groundfish.

In light of all of the above, I find that the F/V CAPE LOOKOUT did not make crab landings harvested from the BS/AI, and that the vessel did not make groundfish landings, during the moratorium qualifying period of January 1, 1988, through February 9, 1992. Therefore, I conclude that the vessel is not an “original qualifying vessel,” and therefore it is not entitled to a Vessel Moratorium Qualification and Permit to fish moratorium crab or moratorium groundfish.

#### FINDINGS OF FACT

1. The F/V CAPE LOOKOUT did not land crab harvested from the BS/AI during the moratorium qualifying period.
2. The F/V CAPE LOOKOUT did not land groundfish during the moratorium qualifying period.

#### CONCLUSION OF LAW

The F/V CAPE LOOKOUT is not an “original qualifying vessel,” and therefore it is not entitled to a Vessel Moratorium Qualification and Permit to fish moratorium crab and moratorium groundfish.

#### DISPOSITION

The IAD on Reconsideration and the revised IAD on Reconsideration that are the subject of this appeal is AFFIRMED. This Decision takes effect on December 30, 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., Alaska Time, on December 10, 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.

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Randall J. Moen  
Appeals Officer