

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0052
)	
DAVID J. OEN,)	
F/V ENDURANCE)	DECISION
ADF&G #37866)	
Appellant)	
_____)	November 16, 1999

STATEMENT OF THE CASE

On February 22, 1996, David Oen filed an application for a Vessel Moratorium Permit. Mr. Oen claimed in his application that the F/V ENDURANCE made groundfish landings as an “original qualifying vessel” during the moratorium qualifying period, January 1, 1988, through February 9, 1992.

In an Initial Administrative Determination (IAD) issued on March 1, 1996, the Restricted Access Management (RAM) Program¹ denied Mr. Oen’s application because its records did not show that the F/V ENDURANCE made groundfish landings during the moratorium qualifying period of January 1, 1988, through February 9, 1992. RAM told Mr. Oen that he needed to produce state fish tickets to verify his claim. RAM issued Mr. Oen an interim Vessel Moratorium Permit for the F/V ENDURANCE to fish moratorium groundfish, pending the outcome of a request for reconsideration or an appeal by Mr. Oen.

In support of his request for reconsideration of the IAD, Mr. Oen submitted to RAM (1) a print-out from the state of Alaska Department of Fish and Game [ADF&G] of Mr. Oen’s rockfish landings from the F/V ROSALYN in 1992 and the F/V ENDURANCE between 1993 and 1996; (2) a letter from the International Pacific Halibut Commission [IPHC], stating that the F/V ENDURANCE landed commercial Pacific halibut in September 1991; (3) a letter from Mr. Oen to RAM, stating that when he bought the F/V ENDURANCE in 1993, the “1993 rules” of the Vessel Moratorium Program allowed vessels with halibut landings to qualify for a Vessel Moratorium Permit.

On June 10, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM determined that Mr. Oen’s evidence was insufficient because halibut is not moratorium groundfish, and because the F/V ENDURANCE’s earliest groundfish (rockfish) landings were made in 1993, outside the moratorium qualifying period of January 1, 1988, through February 9, 1992.

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

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 ENDURANCE entitled to a Vessel Moratorium Permit as an “original qualifying vessel” to fish moratorium groundfish?

PRINCIPLES OF LAW

1. In order to obtain a Vessel Moratorium Permit to fish “moratorium groundfish” under the Vessel Moratorium Program, as an “original qualifying vessel,” the vessel must have made at least one legal landing of moratorium groundfish between January 1, 1988, and February 9, 1992. 50 C.F.R. § 679.4(c)(7)(i)(A).
2. “Moratorium groundfish” does not include Pacific halibut for purposes of issuing a Vessel Moratorium Permit under the Vessel Moratorium Program. 50 C.F.R. § 679.2.
3. An “original qualifying vessel” means a vessel that made a legal landing during the qualifying period, January 1, 1988 through February 9, 1992. 50 C.F.R. § 679.2.
4. The final rule of the Vessel Moratorium Program was promulgated on August 10, 1995, and made effective January 1, 1996. *See*, Federal Register vol. 60, No. 154.

DISCUSSION

Mr. Oen’s evidence, and RAM’s records, do not show that the F/V ENDURANCE made groundfish landings during the moratorium qualifying period of January 1, 1988, through February 9, 1992. The rockfish landings that the vessel made were made between 1993 and 1996, outside the moratorium qualifying period. While IPHC records show that the F/V ENDURANCE made Pacific halibut landings in 1991, Pacific halibut is not moratorium groundfish under the regulations of the Vessel Moratorium Program. Mr. Oen’s claim that the “1993 rules” allowed vessels with halibut landings to qualify for a Vessel Moratorium Permit is invalid, because the Vessel Moratorium Program did not come into effect until 1996. Furthermore, while the F/V ROSALYN made rockfish landings in January 1992, within the moratorium qualifying period, the application for a Vessel Moratorium Permit in this case is for F/V ENDURANCE, as the “original qualifying vessel.” If the F/V ROSALYN has moratorium rights under the Vessel Moratorium Program, Mr. Oen can apply to RAM for the transfer

of those rights to the F/V ENDURANCE.²

Based on the evidence in the record, I find that the F/V ENDURANCE did not make groundfish landings during the moratorium qualifying period. As a result, I conclude that Mr. Oen is not entitled to a Vessel Moratorium Permit for the vessel to fish moratorium groundfish.

FINDING OF FACT

The F/V ENDURANCE did not land groundfish during the moratorium qualifying period of January 1, 1988, through February 9, 1992.

CONCLUSION OF LAW

The F/V ENDURANCE is not entitled to a Vessel Moratorium Permit to fish moratorium groundfish because the vessel is not an “original qualifying vessel.”

DISPOSITION

The IAD on Reconsideration and the revised IAD on Reconsideration that are the subject of this appeal are AFFIRMED. This Decision takes effect December 16, 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 November 26, 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

²See, 50 C.F.R. § 679.4(c)(7)(ii), which describes the requirements for the transfer of moratorium qualification rights to another vessel.