

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0055
)	
JOHN PETRABORG,)	
F/V CHARON)	DECISION
ADF&G # 13619)	
Appellant)	
_____)	December 1, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on March 18, 1996, the Restricted Access Management (RAM) Program¹ denied the Appellant's application to transfer the moratorium qualification of the F/V CHARON, an "original qualifying vessel," to his own vessel, the F/V ROULETTE, under the Vessel Moratorium Program. RAM denied the transfer because the current owner of the F/V CHARON and the moratorium qualification (*Mark Petraborg*) did not consent to the transfer. RAM issued an interim Vessel Moratorium Permit to the Appellant for the vessel, pending the outcome of a request for reconsideration or of an appeal by the Appellant.

The Appellant requested reconsideration of the IAD. In a letter (May 10, 1996) to RAM, he claims that the transfer should be approved because he owned and fished the F/V CHARON during the moratorium qualifying period (January 1, 1988, through February 9, 1992). In the letter, the Appellant acknowledges that he is not the current owner of the F/V CHARON, and that when he sold the vessel on April 14, 1993, he did not retain any moratorium fishing rights (that did not exist at that time, but that he knew might some day exist). The Appellant claims that he had "no idea" of the comment period, prior to the adoption of the regulations of the Vessel Moratorium Program in August 1995.

On June 12, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM affirmed the IAD for the same reasons stated in the IAD. 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 Appellant entitled to have the moratorium qualification of the F/V CHARON transferred to the F/V

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

ROULETTE?

PRINCIPLES OF LAW

1. Under the regulations of the Vessel Moratorium Program, the “moratorium qualification” of an “original qualifying vessel” may be transferred to a different vessel, if the transfer is approved by RAM and by the current owner of the moratorium qualification. 50 C.F.R. § 679.4(c)(8)(ii)(E).
2. An “original qualifying vessel” is a vessel that made a legal landing of moratorium crab or moratorium groundfish during the moratorium qualifying period of January 1, 1988, through February 9, 1992. 50 C.F.R. § 679.2.
3. The North Pacific Fishery Management Council originally proposed a vessel moratorium program at its meetings in June 1992 and January 1993. The proposed rules of the Vessel Moratorium Program were published in the Federal Register on May 12, 1995. The public was given until June 1, 1995 to submit comments to the National Marine Fisheries Service. 60 Fed. Reg. 25,677-87.
3. The regulations of the Vessel Moratorium Program that pertain to the transfer of a vessel’s moratorium qualification were adopted August 10, 1995, and took effect January 1, 1996. 60 Fed. Reg. 40,763 - 40,775 (August 10, 1995).

DISCUSSION

The F/V CHARON is an “original qualifying vessel” under the Vessel Moratorium Program. RAM’s records show that the owner of the moratorium qualification of the F/V CHARON is Mark Petraborg. Appellant admits that he is not the current owner of the vessel. Appellant’s application to transfer the moratorium qualification of the F/V CHARON to the F/V ROULETTE is not signed by Mark Petraborg. Nor is there any agreement in the record between Appellant and Mark Petraborg to transfer the moratorium qualification of the F/V CHARON. Thus, the weight of evidence shows that the owner of the moratorium qualification of the F/V CHARON did not agree to transfer the moratorium qualification to the F/V ROULETTE.

The regulations clearly provide that the transfer of the moratorium qualification of an original qualifying vessel must be approved by the owner of the moratorium qualification. Appellant was given constructive notice, and an opportunity to provide public comment, when the notice of proposed regulations and the final regulations of the Vessel Moratorium Program were published in the Federal Register. Therefore, I conclude that the Appellant is not entitled to the transfer of the moratorium qualification of the F/V CHARON to the F/V ROULETTE.

FINDING OF FACT

The owner of the vessel moratorium of the F/V CHARON did not agree to the transfer of the moratorium qualification to the F/V ROULETTE.

CONCLUSION OF LAW

The Appellant is not entitled to the transfer of the moratorium qualification of the F/V CHARON to the F/V ROULETTE.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect on January 3, 2000, 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 13, 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