

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0072
)
REGAL BALLYHOO, Inc., &)
KARM ENTERPRISES, Inc.,)
F/V BALLYHOO) DECISION
ADF&G # 03645)
Appellant)
_____) November 30, 1999

STATEMENT OF THE CASE

When Appellants applied for a Vessel Moratorium Qualification and Permit for the F/V BALLYHOO as an “original qualifying vessel” under the Vessel Moratorium Program, they claimed that the vessel made landings of moratorium crab and moratorium groundfish from February 10, 1992, through December 11, 1994.

In an Initial Administrative Determination (IAD) issued on March 15, 1996, the Restricted Access Management (RAM) Program¹ denied the Appellants’ application because its records did not show that the vessel made moratorium crab or moratorium groundfish landings during the moratorium qualifying period, January 1, 1988, through February 9, 1992. RAM issued an interim Vessel Moratorium Permit to the Appellants for the F/V BALLYHOO to fish moratorium crab and moratorium groundfish, pending a request for reconsideration or an appeal by the Appellants.

The Appellants requested reconsideration of the IAD, and submitted state of Alaska fish tickets for landings of crab or groundfish from the F/V BALLYHOO between February 24, 1992, and November 1994. On August 9, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM determined that the fish tickets were insufficient evidence of moratorium landings because the landings were outside the moratorium qualifying period of January 1, 1988, through February 9, 1992.

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

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

Is the F/V BALLYHOO entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium crab or 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 (BS/AI), 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

The evidence in the record does not show that the F/V BALLYHOO made moratorium crab or moratorium groundfish landings from January 1, 1988, through February 9, 1992. While the Appellants submitted state fish tickets for landings of crab or groundfish from the vessel, the landings were not made within the moratorium qualifying period.

In light of this, I find the weight of evidence shows that the F/V BALLYHOO did not land moratorium crab or moratorium groundfish during the moratorium qualifying period of January 1, 1988, through February 9, 1992. Therefore, I conclude that the vessel is not entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium crab or moratorium groundfish.

FINDING OF FACT

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

CONCLUSION OF LAW

The F/V BALLYHOO is not entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium crab or moratorium groundfish.

DISPOSITION

The IAD on Reconsideration that is 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.

Randall J. Moen
Appeals Officer