

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 97-0002
)	
BETSY M. COMPANY,)	
F/V BETSY)	DECISION
ADF&G # 37058)	
Appellant)	
_____)	November 30, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on June 24, 1996, the Restricted Access Management (RAM) Program¹ denied the Appellant's application for a Vessel Moratorium Qualification and Permit for the F/V BETSY as an "original qualifying vessel" under the Vessel Moratorium Program, 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 Appellant for the F/V BETSY to fish moratorium crab and moratorium groundfish, pending a request for reconsideration or an appeal by the Appellants.

The Appellant requested reconsideration of the IAD, and submitted a list from a seafood producer's cooperative of the landings made by the F/V BETSY on state fish tickets between November 1994 and January 1995. RAM also received a letter from Mr. R.W. Cranston, on behalf of the Appellant, stating that he purchased the vessel in April 1992, he made landings of halibut, black cod, and rock fish in 1992, 1993, and 1994. Neither the Appellant or Mr. Cranston produced state fish tickets for the landings.

On August 9, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM determined that the documents produced for the record were insufficient evidence of landings from the F/V BETSY during the moratorium qualifying period.

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 BETSY 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. 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.
4. “Moratorium groundfish” means species of groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in the Bering Sea/Aleutian Islands while commercial fishing under federal regulations. 50 C.F.R. § 679.2.
5. Under state of Alaska regulations, persons or companies that caught and processed crab or groundfish (or had the crab or groundfish processed by someone else) between 1988 and 1992 were required to record and report the landings of the fish via a state of Alaska fish ticket. 05 AAC 039.130(b).

DISCUSSION

The Appellant’s evidence, and RAM’s records, do not show that the F/V BETSY landed moratorium crab or moratorium groundfish between January 1, 1988, and February 9, 1992. Neither the list of landings in ADF&G’s records, nor the letter written by Mr. Cranston, show that landings of moratorium crab or moratorium groundfish were made from the vessel during that period. But even if that evidence did show that such landings did occur, state fish tickets were required for the landings. Absent state fish tickets, the list and the letter would be insufficient evidence of legal landings of moratorium crab or groundfish.

In light of this, I find the weight of evidence shows that the F/V BETSY did not land moratorium crab or moratorium groundfish during 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 BETSY did not land moratorium crab or moratorium groundfish during January 1, 1988, through February 9, 1992.

CONCLUSION OF LAW

The F/V BETSY 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