

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 97-0004
)	
JOHN NELSON, Jr.)	
F/V OUT FOX)	DECISION
ADF&G # 00109)	
Appellant)	
_____)	November 29, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on September 27, 1996, the Restricted Access Management (RAM) Program¹ denied Mr. Nelson's application for a Vessel Moratorium Permit for the F/V OUT FOX as an "original qualifying vessel" under the Vessel Moratorium Program. RAM denied the application because its records did not show that the vessel made crab landings from harvests in the Bering Strait or Aleutian Islands [BS/AI]. RAM issued an interim Vessel Moratorium Permit to Mr. Nelson for the vessel to fish moratorium crab (and moratorium groundfish), pending a request for reconsideration or an appeal by Mr. Nelson.

In support of his request for reconsideration of the IAD, Mr. Nelson submitted a settlement sheet from Ursin Seafoods, Inc., Kodiak, for purchases of crab from the F/V OUT FOX between January 20, 1986, and January 30, 1988. No state fish tickets were submitted for the record.

On January 16, 1997, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM determined that the settlement sheet was insufficient evidence of his claim. RAM noted that the settlement sheet did not specify the species, dates, and areas of Mr. Nelson's claimed landings.

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 OUT FOX entitled to a Vessel Moratorium Permit as an "original qualifying vessel" to fish moratorium crab?

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

PRINCIPLES OF LAW

1. To obtain a Vessel Moratorium Permit to fish moratorium crab 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 Bering Sea/Aleutian Islands [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. 50 C.F.R. § 679.2.
5. Under state of Alaska regulations during the moratorium qualifying period, persons or companies that caught and processed crab (or had the crab processed) between 1988 and 1992 were required to record and report the landings of the crab via an Alaska state fish ticket (at the time of the landing of the fish). 05 AAC 039.130(b).

DISCUSSION

The evidence in the record does not show that the F/V OUT FOX made crab landings as a result of harvests from the BS/AI, (or made groundfish landings), during January 1, 1988, through February 9, 1992. While Mr. Nelson’s settlement sheet shows that crab from the F/V OUT FOX was sold to Ursin Seafoods, Inc., the settlement sheet does not show where the crab was harvested. Nor is there evidence that state fish tickets were ever written and submitted to the state of Alaska for crab harvests aboard the F/V OUT FOX in the BS/AI during the qualifying period. Thus, even if the settlement sheet had shown that crab harvests in the BS/AI were made aboard the vessel during the moratorium qualifying period, the landings from those crab harvests cannot be considered “legal landings” for purposes of obtaining a Vessel Moratorium Permit, because the landings were not reported to the state of Alaska via an Alaska state fish ticket.

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

FINDING OF FACT

The F/V OUT FOX did not land crab from harvests made in the BS/AI, or land groundfish, during January 1, 1988, through February 9, 1992.

CONCLUSION OF LAW

The F/V OUT FOX is not entitled to a Vessel Moratorium Permit as an “original qualifying vessel” to fish moratorium crab.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect on December 29, 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 9, 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