

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 97-0013
)
K&S CONSTRUCTION)
F/V THOMAS HENRY) DECISION
ADF&G # 36532)
Appellant)
_____) November 30, 1999

STATEMENT OF THE CASE

When the Appellant filed an application for a Vessel Moratorium Qualification and Permit for the F/V THOMAS HENRY as an “original qualifying vessel” under the Vessel Moratorium Program, it claimed that the vessel made moratorium crab landings with pot gear between February 10, 1992, and December 11, 1994.

In an Initial Administrative Determination (IAD) issued on June 23, 1997, the Restricted Access Management (RAM) Program¹ denied the Appellant’s application because its records did not show that the vessel made moratorium crab or moratorium groundfish landings during the moratorium qualifying period of January 1, 1988, through February 9, 1992. RAM issued the Appellant an interim Vessel Moratorium Permit for the F/V THOMAS HENRY to fish moratorium crab and groundfish with pot gear, pending the outcome of a request for reconsideration or an appeal by the Appellant.

In response to the IAD, the Appellant filed a request for reconsideration, and submitted a transcript from testimony by Don Stiles on June 20, 1997, before the North Pacific Fishery Management Council, regarding his use of the F/V THOMAS HENRY in 1994, 1995, and 1996.

On August 27, 1997, RAM issued an IAD on Reconsideration that affirmed 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 the F/V THOMAS HENRY entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium crab or moratorium groundfish?

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 Qualification and Permit under the Vessel Moratorium Program,” as an “original qualifying vessel,” 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 [while commercial fishing under federal regulations]. 50 C.F.R. § 679.2.
3. “Moratorium groundfish” means 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 of moratorium crab or moratorium groundfish during the moratorium qualifying period. 50 C.F.R. § 679.2.

DISCUSSION

The Appellant did not submit evidence [such as state fish tickets] to show that the F/V THOMAS HENRY landed moratorium crab or moratorium groundfish during the period of January 1, 1988, through February 9, 1992. The Appellant’s evidence, at best, shows only that crab or groundfish landings might have been made from the vessel in 1994, 1995, and 1996.

In light of all of this, I find that the F/V THOMAS HENRY did not make landings of moratorium crab or moratorium groundfish during the 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 THOMAS HENRY did not land moratorium crab or moratorium groundfish during the period of January 1, 1988, through February 9, 1992.

CONCLUSION OF LAW

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