

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0023
)	
DAVID DENSMORE,)	
F/V MARY M)	DECISION
ADF&G # 17998)	
Appellant)	
_____)	November 30, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on March 18, 1996, the Restricted Access Management (RAM) Program¹ denied Mr. Densmore's application for a Vessel Moratorium Qualification and Permit for the F/V MARY M 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 of January 1, 1988, through February 9, 1992. RAM issued Mr. Densmore an interim Vessel Moratorium Permit for the F/V MARY M to fish moratorium crab and moratorium groundfish, pending a request for reconsideration or an appeal by Mr. Densmore.

Mr. Densmore requested reconsideration of the IAD, and in support of that request, he submitted state of Alaska fish tickets for Tanner crab landings made from harvests aboard the F/V MARY M in the Kodiak management area. Mr. Densmore also produced a state of Alaska fish ticket for a Pacific Gray Cod landing made from the vessel on February 10, 1992.

On June 6, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM concluded that Mr. Densmore's evidence did not show that the F/V MARY M made crab harvests in the Bering Sea/Aleutian Islands [BS/AI] management area, or groundfish landings, during 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 MARY M entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium crab and moratorium groundfish?

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 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. 50 C.F.R. § 679.2.

DISCUSSION

Mr. Densmore’s evidence, and RAM’s records, do not show that the F/V MARY M made crab landings from harvests in BS/AI, or that the vessel made groundfish landings, during the moratorium qualifying period of January 1, 1988, through February 9, 1992. Mr. Monroe’s fish tickets show only that crab harvests were made in the Kodiak management area, and that a groundfish landing was made on February 10, 1992, one day after the last day of the moratorium qualifying period.

In light of all of the above, I find that the F/V MARY M did not make crab landings harvested from the BS/AI, and that the vessel did not make groundfish landings, during the moratorium qualifying period. 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.

FINDINGS OF FACT

1. The F/V MARY M did not make moratorium crab landings from harvests in the BS/AI during the moratorium qualifying period of January 1, 1988, through February 9, 1992.
2. The F/V MARY M did not make moratorium groundfish landings during the moratorium qualifying period of January 1, 1988, through February 9, 1992.

CONCLUSION OF LAW

The F/V MARY M 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