

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

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| In re Application of |) | Appeal No. 96-0034 |
| |) | |
| DEFIANT FISHERIES |) | DECISION |
| F/V MS. SAM |) | |
| ADF&G # 62428 |) | September 30, 1999 |
| Appellant |) | |
| _____ |) | |

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on Reconsideration on June 7, 1996, which denied Defiant Fisheries' application for a Vessel Moratorium Qualification and Permit (VMQ&P) under the Vessel Moratorium Program on Groundfish and Crab.¹ The Reconsideration affirmed RAM's earlier IAD of March 20, 1996. Both IADs concluded that Defiant Fisheries was not eligible to receive a Vessel Moratorium Qualification or Permit. The basis for both IADs was that Defiant Fisheries did not show that its vessel had made any landings of moratorium crab or moratorium groundfish species between January 1, 1988 and February 9, 1992.

ISSUE

Does Defiant Fisheries' vessel, the F/V MS. SAM, have moratorium qualification under the Vessel Moratorium Program on Groundfish and Crab?

BACKGROUND

Defiant Fisheries, through its agent Mike Haggren, filed an application for a Vessel Moratorium Qualification and Permit on February 29, 1996. The application claimed landings of moratorium crab species with pot gear in period 1 (January 1, 1988 through February 9, 1992) and landings of moratorium crab and groundfish species with hook and pot gear in period 2 (February 10, 1992

¹ The Vessel Moratorium Program for Groundfish and Crab is found at 50 C.F.R. § 679.4(c). It was extended through December 31, 1999 and will expire on that date. *See* 64 Fed. Reg. 3651-3653 (January 24, 1999). This program should not be confused with the North Pacific License Limitation Program (LLP), which is found at 50 C.F.R. § 679.4(k). The LLP applies to fishing for certain species of groundfish in the Gulf of Alaska and Bering Sea/Aleutian Islands areas and certain species of crab in the Bering Sea/Aleutian Islands area. The application period for LLP runs from September 13, 1999 through December 17, 1999. For further information on the License Limitation Program, Defiant Fisheries may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2).

through December 11, 1994).

RAM determined in its IAD of March 20, 1996 that Defiant Fisheries had not shown any landings that would enable its vessel to qualify for the moratorium program. Defiant Fisheries asked RAM to reconsider its decision. It submitted a copy of a fish ticket showing a landing of Tanner crab with pot gear in the Kodiak area on January 22, 1992. RAM considered this additional evidence and, in its Initial Administrative Determination on Reconsideration on June 7, 1996, denied Defiant Fisheries's claim. The basis for RAM's determination was that the fish ticket showed landings of crab with pot gear in the Gulf of Alaska, not the Bering Sea/Aleutian Islands area. RAM then referred this case to the Office of Administrative Appeals for filing as an appeal.

DISCUSSION

The Vessel Moratorium Program on Groundfish and Crab only limits fishing for certain species of crab in the Bering Sea and Aleutian Islands (BSAI) area and certain species of groundfish in the Gulf of Alaska (GOA) and BSAI areas. The moratorium species of crab are Tanner and king crab harvested in BSAI.² The moratorium groundfish species are groundfish, except sablefish caught with fixed gear, harvested in the GOA or BSAI³

A vessel is qualified to participate in the Vessel Moratorium Program on Groundfish and Crab if it had landings of moratorium species between January 1, 1998 and February 9, 1992.⁴ The fish ticket submitted by Defiant Fisheries shows participation in the Tanner crab fishery in the Gulf of Alaska. Tanner crab caught in the Gulf of Alaska is not a moratorium species. Neither RAM's Official Record nor the evidence submitted by Defiant Fisheries shows that the F/V MS. SAM ever made any landings of moratorium crab or moratorium groundfish. Therefore I conclude that the F/V MS. SAM is not entitled to receive moratorium qualification based on landings.

This Decision does not affect Defiant Fisheries' ability to participate in the crab fishery in the Gulf of

² See 50 C.F.R. § 670.2

³ Moratorium groundfish species means "species of groundfish, except sablefish caught with fixed gear, harvested in the GOA or in the BSAI, the commercial fishing of which is governed by this part." 50 C.F.R. § 670.(2). Groundfish means "target species and the 'other species' category, specified annually pursuant to § 670.20(a)(2)." *Id.* Pursuant to 50 C.F.R. § 670.20(a)(2), NMFS, after consultation with the North Pacific Fisheries Management Council, sets annual total allowable catch (TAC) and reserves for certain species of fish. The TAC figures are published annually in the Federal Register. See, e.g., 55 Fed. Reg. 3223 - 3229 (January 31, 1990) (1990 fishing year); 56 Fed. Reg. 6290 - 6296 (February 15, 1991)(1991 fishing year); 57 Fed. Reg. 2844 - 2851 (January 24, 1992)(1992 fishing year).

⁴ 50 C.F.R. § 679.4(c)(7)(i). A vessel can also obtain moratorium qualification by transfer, which is not at issue here. See 50 C.F.R. § 679.4(c)(ii).

Alaska because the Vessel Moratorium for Groundfish and Crab does not govern that fishery.

FINDING OF FACT

No legal landings of moratorium species between January 1, 1988 and February 9, 1992 were made from Defiant Fisheries' vessel, the F/V MS. SAM.

CONCLUSION OF LAW

Defiant Fisheries' vessel, the F/V MS. SAM, is not entitled to receive a moratorium qualification.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect November 1, 1999, unless by that date the Regional Administrator orders 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 the tenth day after this Decision, October 12, 1999. 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.

Mary Alice McKeen
Appeals Officer