

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0042
)	
DONALD N. MULLER)	
F/V FOXY LADY)	DECISION
ADF&G # 26108)	
Appellant)	
_____)	November 16, 1999

STATEMENT OF THE CASE

On January 26, 1996, Donald Muller filed an application for a Vessel Moratorium Permit. Mr. Muller claimed in his application that the F/V FOXY LADY made crab and groundfish landngs as an “original qualifying vessel” during the moratorium qualifying period, January 1, 1988, through February 9, 1992.

In an Initial Administrative Determination (IAD) issued on February 23, 1996, the Restricted Access Management (RAM) Program¹ approved Mr. Muller’s application, but determined that the F/V FOXY LADY did not make qualifying crab landings as a result of harvests in the Bering Sea/Aleutian Islands [BS/AI]. RAM issued Mr. Muller an interim Vessel Moratorium Permit for the F/V FOXY LADY to fish moratorium crab and moratorium groundfish, pending the outcome of a request for reconsideration or an appeal by Mr. Muller.

Mr. Muller requested reconsideration of the IAD and submitted to RAM evidence from the Alaska Department of Fish and Game, which showed that the F/V FOXY LADY made Tanner crab harvests in the Central Gulf of Alaska management area between 1988 and 1991.

On August 19, 1998, RAM issued an IAD on Reconsideration that affirmed the earlier IAD. RAM determined that Mr. Muller’s evidence was insufficient because it did not show that the F/V FOXY LADY made crab landings from harvests made in the BS/AI. 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 FOXY eligible to receive a Vessel Moratorium Permit as an “original qualifying vessel” to

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

fish moratorium crab?

PRINCIPLES OF LAW

1. In order to obtain a Vessel Moratorium Permit to fish “moratorium crab” under the Vessel Moratorium Program, as an “original qualifying vessel,” the vessel must have made at least one legal landing of king or Tanner crab harvested in the Bering Sea/Aleutian Islands, or at least one legal landing of moratorium groundfish, between January 1, 1988, and February 9, 1992. 50 C.F.R. § 679.4(c)(7)(i)(A).
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. 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. Muller’s evidence, and RAM’s records, do not show that the F/V FOXY LADY made crab landings from harvests in BS/AI during the moratorium qualifying period of January 1, 1988, through February 9, 1992. Thus, I find that the F/V FOXY LADY did not make crab landings harvested from the BS/AI. As a consequence, I conclude that the vessel is not an “original qualifying vessel,” and is therefore not eligible to receive a Vessel Moratorium Permit to fish moratorium crab.

FINDING OF FACT

The F/V FOXY LADY did not land crab harvested from the BS/AI during the moratorium qualifying period.

CONCLUSION OF LAW

The F/V FOXY LADY is not eligible to receive a Vessel Moratorium Permit as an “original qualifying vessel” to fish moratorium crab.

DISPOSITION

The IAD on Reconsideration and the revised IAD on Reconsideration that are the subject of this appeal is AFFIRMED. This Decision takes effect December 16, 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 November 26, 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