

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0051
)
JOHN R. THOMAS,)
F/V MERIDIAN) DECISION
ADF&G # 96-0051)
Appellant)
_____) November 16, 1999

STATEMENT OF THE CASE

On January 8, 1996, John Thomas filed an application for a Vessel Moratorium Permit. Mr. Thomas claimed in his application that the F/V MERIDIAN made crab landings, as an “original qualifying vessel,” during the moratorium qualifying period, between January 1, 1988, and February 9, 1992.

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

Mr. Thomas requested reconsideration of the IAD and submitted to RAM state of Alaska fish tickets, settlement sheets, checks, and his Commercial Fisheries Entry Commission permit card, as evidence that the F/V F/V MERIDIAN made Tanner crab harvests with pot gear in 1989 and 1990.

On June 10 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM concluded that Mr. Thomas’ evidence was insufficient because it did not show that the F/V MERIDIAN 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.

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

ISSUE

Is the F/V MERIDIAN eligible to receive a Vessel Moratorium Permit as an “original qualifying vessel” to 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 “moratorium crab,” 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. Thomas’ evidence, and RAM’s records, do not show that the F/V MERIDIAN made [Tanner or king] crab landings from harvests in BS/AI during the moratorium qualifying period of January 1, 1988, through February 9, 1992. Mr. Thomas’ evidence shows only that the F/V MERIDIAN made crab landings from harvests in the Kodiak fish management areas [stat areas 545631 and 545632]. Thus, I find that the F/V MERIDIAN did not make crab landings harvested from the BS/AI. As consequence, I conclude that the vessel is not an “original qualifying vessel,” and therefore is not entitled to a Vessel Moratorium Permit to fish moratorium crab.

FINDING OF FACT

The F/V MERIDIAN did not land crab from harvests in the BS/AI during the moratorium qualifying period, January 1, 1988, to February 9, 1992.

CONCLUSION OF LAW

The F/V MERIDIAN 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 on 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