

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
)
MICHAEL C. HATTEN, SR.)
F/V THUNDERBIRD) DECISION
ADF&G # 64042)
Appellant)
_____) November 26, 1999

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on Reconsideration on June 19, 1996, which denied Mr. Hatten's application for a vessel moratorium qualification and permit under the Vessel Moratorium Program on Groundfish and Crab for the F/V THUNDERBIRD.¹ RAM concluded that Mr. Hatten was not entitled to a moratorium qualification or permit for the F/V THUNDERBIRD because it was not a qualifying vessel. 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.²

ISSUE

Is Mr. Hatten entitled to a vessel moratorium qualification and permit for the F/V THUNDERBIRD?

BACKGROUND

Mr. Hatten applied for a vessel moratorium qualification and permit on May 30, 1996. He claimed landings from the F/V THUNDERBIRD of moratorium groundfish with hook gear in period 1 (January

¹ The Vessel Moratorium Program for Groundfish and Crab, 50 C.F.R. § 679.4(c), expires on December 31, 1999. This program should not be confused with the North Pacific License Limitation Program (LLP), 50 C.F.R. § 679.4(k). As of January 1, 2000, a license limitation permit will be necessary to harvest certain species of groundfish in the Gulf of Alaska and Bering Sea and Aleutian Islands areas and certain species of crab in the Bering Sea and Aleutian Islands area. The application period for LLP is from September 13, 1999 through December 17, 1999. For further information on the License Limitation Program, Mr. Hatten may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2). The NMFS website at "http://www.fakr.noaa.gov" also has information on the LLP.

² 50 C.F.R. § 679.43.

1, 1988 to February 9, 1992) and period 2 (February 10, 1992 to December 11, 1992). He noted on the application that his first boat, the F/V INLET VENTURE, was last fished in 1991 and that his new boat, the F/V THUNDERBIRD, began fishing in 1992 to the present.

RAM issued an IAD which denied Mr. Hatten's application because RAM's records did not show that the F/V THUNDERBIRD was a qualified vessel. The IAD informed Mr. Hatten that he needed to produce fish tickets to show the F/V THUNDERBIRD made qualifying landings. The IAD also told Mr. Hatten that, if his last boat (the F/V INLET VENTURE) was the qualifying vessel and he sold that boat, that the fishing rights of the boat stayed with the boat, and therefore went to the new owner, unless the bill of sale specified that Mr. Hatten kept the fishing rights.³

In accordance with federal regulation, RAM issued Mr. Hatten an interim moratorium permit with endorsements to harvest groundfish with trawl, pot and hook gear, which is valid pending final agency action on his application.³ These are the endorsements to which Mr. Hatten would be entitled, if the claims on his application were proven true.

Mr. Hatten asked RAM to reconsider the IAD. He stated that the F/V THUNDERBIRD was first fished in May 1993 and that construction of the vessel was begun by Maderia Boat Works in 1991 and completed by in April 1993. To support these statements, he submitted fish tickets and fishing logs showing landings of moratorium groundfish in the Gulf of Alaska in 1993 and in 1994 from the F/V THUNDERBIRD, a contract for construction of the boat with Maderia Boat Works and an income and expense statement from Maderia Boat works for Michael Hatten for the period September 1, 1991 to January 5, 1992.

On reconsideration, RAM affirmed its original decision because the evidence submitted by Mr. Hatten did not show that the F/V THUNDERBIRD made qualifying landings.

DISCUSSION

For a vessel to qualify to participate in the Moratorium Program, the vessel must have moratorium qualification. A vessel has moratorium qualification either because it is an original qualifying vessel or because it has received a moratorium qualification by transfer from an original qualifying vessel.⁴ An original qualifying vessel is a vessel that made landings of moratorium crab or groundfish during the

³ The rule is broader than that. The retention of the moratorium rights by a prior owner can be in any agreement or contract, which includes a bill of sale. Yukon Queen Fisheries, LLP, Appeal No. 96-0009 (Sept. 17, 1998).

³ 50 C.F.R. § 679.4(c)(10)

⁴ 50 C.F.R. § 679.4(c)(7).

qualifying period, which is January 1, 1988 to February 9, 1992.⁵ Moratorium crab are Tanner and king crab harvested in the Bering Sea and Aleutian Islands area (BSAI). Moratorium groundfish are species of groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in BSAI.⁶

The fish tickets submitted by Mr. Hatten for landings of moratorium groundfish from the F/V THUNDERBIRD in 1993 and 1994 do not entitle Mr. Hatten to a moratorium permit. For landings to be qualified landings, they must be in the qualifying period, which is January 1, 1988 to February 9, 1992. I assume that Mr. Hatten's claims that the F/V THUNDERBIRD was under construction in 1991 and was completed in April 1993 are true. The regulations, however, make no exception for a vessel under construction during the qualifying period.⁷ A vessel must have moratorium qualification either because it is an original qualifying vessel or because it obtained moratorium qualification by transfer from an original qualifying vessel.

Mr. Hatten stated in his application that the boat he owned the F/V INLET VENTURE prior to the F/V THUNDERBIRD. The record does not show whether the F/V INLET VENTURE is a qualified vessel. If it were, Mr. Hatten would have to show that, when he sold the F/V INLET VENTURE, he retained the moratorium rights of the boat.⁸ Mr. Hatten does not allege, nor does the record show, that Mr. Hatten retained the moratorium qualification of the F/V INLET VENTURE by contract or agreement. No application was filed to transfer the moratorium qualification of the F/V INLET VENTURE or any other vessel to the F/V THUNDERBIRD.

Therefore, I conclude Mr. Hatten is not entitled to a vessel moratorium permit or qualification for the F/V THUNDERBIRD because the F/V THUNDERBIRD was not an original qualifying vessel and because no application was filed to transfer a moratorium qualification from an original qualifying vessel to the F/V THUNDERBIRD.

FINDINGS OF FACT

1. The F/V THUNDERBIRD did not make landings of any moratorium species between January 1, 1988 and February 9, 1992.

⁵ 50 C.F.R. § 679.2.

⁶ 50 C.F.R. § 679.2.

⁷ The only references in the regulations are to vessel reconstruction and apply to applications for transfers of moratorium qualification. See 50 C.F.R. § 679.4(c)(8)(iv), 50 C.F.R. § 679.4(c)(9)(iv).

⁸ Yukon Queen Fisheries, LLP, Appeal No. 96-0009 (Sept. 17, 1998); George Eliason, Appeal 96-0054 (Nov. 19, 1999). This is not the same rule as the License Limitation Program. See 50 C.F.R. § 679.2 (definition of "eligible applicant"); George Eliason, Appeal 96-0054 at 5 n.13.

2. No application was filed to transfer the moratorium qualification of any vessel to the F/V THUNDERBIRD.

CONCLUSION OF LAW

Mr. Hatten is not entitled to a moratorium qualification or permit for the F/V THUNDERBIRD

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect December 27, 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, December 6, 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