

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 05-0010
	)	
DOUGLAS WILLISCROFT,	)	DECISION
Appellant	)	
	)	July 21, 2008
_____	)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program of the National Marine Fisheries Service (NMFS) issued an Initial Administrative Determination (IAD) on October 25, 2005, that denied Mr. Williscroft's application for catcher vessel crew Quota Share (QS) in the Bristol Bay red king crab, Bering Sea snow crab, and St. Matthew blue king crab fisheries under the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (CRP).<sup>1</sup> RAM denied the application because the official crab rationalization record does not show that Mr. Williscroft made the requisite qualifying landings for the QS.<sup>2</sup>

Mr. Williscroft filed a timely appeal of the IAD. His interests are directly and adversely affected by the IAD, as required by 50 C.F.R. § 679.43(b). Mr. Williscroft did not request a hearing, nor is a hearing authorized in this case because there is no genuine and substantial issue of adjudicative fact for resolution at a hearing, as required by 50 C.F.R. § 679.43(g)(3)(i). The record contains sufficient information to render a decision in this appeal, and so the record is now closed, as provided in 50 C.F.R. § 679.43(k).

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<sup>1</sup> Final Rule, 70 Fed. Reg. 10174 (Mar. 2, 2005). This rule, and subsequent amendments, are primarily at 50 C.F.R. Part 680, available online at the NMFS Alaska Region website: <http://alaskafisheries.noaa.gov/regs/summary.htm>.

<sup>2</sup> The "official crab rationalization record" is defined as "the information prepared by the Regional Administrator [of NMFS] about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40." [50 C.F.R § 679.2] According to RAM, the "official CRP record" is a comprehensive data base that contains relevant information on the BSAI crab fisheries, including permit holder and fish ticket landing files, processing information, and other data required for properly assigning harvesting and processing histories to qualified persons and calculating the amounts of QS and Processor QS to which they are entitled. The information in the Official Record is derived from a variety of sources, including the Alaska Department of Fish and Game, the Commercial Fisheries Entry Commission, the Alaska Department of Revenue, and NOAA Fisheries Service (NMFS). [General Guidelines for Preparing Applications, BSAI Crab Rationalization - "Instructions for Applying for QS and PSQ" - April 2005].

## ISSUE

Does Mr. Williscroft qualify for catcher vessel crew QS in the Bristol Bay red king crab, Bering Sea snow crab, and St. Matthew blue king crab fisheries under the CRP?

## ANALYSIS

The CRP regulations require NMFS to issue catcher vessel crew QS to eligible applicants for each of the crab QS fisheries under the CRP.<sup>3</sup> Each crab fishery has its own landings requirements for crab QS.<sup>4</sup> Therefore, an applicant for QS must satisfy the specific landing requirements of a crab fishery under the CRP to qualify for QS in the fishery.

To qualify for catcher vessel crew QS in the **Bristol Bay red king crab fishery**, Mr. Williscroft must demonstrate that he made at least one legal landing of Bristol Bay red king crab in three of the five base period crab seasons: November 1 - 5, 1996; November 1 - 5, 1997; November 1 - 6, 1998; October 15 - 20, 1999; and October 16 - 20, 2000; and in two of the three recent participation crab seasons: October 15 - 20, 1999; October 16 - 20, 2000; and October 15 - 18, 2001.<sup>5</sup>

To qualify for catcher vessel crew QS in the **Bering Sea snow crab fishery**, Mr. Williscroft must demonstrate that he made a legal landing of Bering Sea snow crab in three of the five base period crab seasons: January 15 - February 29, 1996; January 15 - March 21, 1997; January 15 - March 20, 1998; January 15 - March 22, 1999; and April 1 - 8, 2000; and in two of the three recent participation crab seasons: April 1 - 8, 2000; January 15 - February 14, 2001; and January 15 - February 8, 2002.<sup>6</sup>

To qualify for catcher vessel crew QS in the **St. Matthew blue king crab fishery**, Mr. Williscroft must demonstrate that he made a legal landing of St. Matthew blue king crab in three of the five base period crab seasons: September 15 - 22, 1994; September 15 - 20, 1995; September 15 - 23, 1996; September 15 - 22, 1997; and September 15 - 26, 1998; and participated in two of the last three recent participation crab seasons prior to June 10, 2002, for the Eastern Aleutian Island brown king crab, Western Aleutian Island brown king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.<sup>7</sup>

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<sup>3</sup> 50 C.F.R. § 680.40(a).

<sup>4</sup> 50 C.F.R. § 680.40(b).

<sup>5</sup> 50 C.F.R. § 680.40(b)(1)(ii) and 50 C.F.R. § 680.40(b)(3)(iii)(B) and (C). Columns C and D, Table 7 to Part 680 - Initial Issuance of QS by Crab QS Fishery.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

A State of Alaska fish ticket is the only kind of evidence that can be used to qualify an applicant for catcher vessel crew QS.<sup>8</sup> The fish ticket must show that the applicant made the landings for the QS under a State of Alaska Interim Use Permit.<sup>9</sup>

Mr. Williscroft produced State of Alaska fish ticket records that show he made crab landings in the Bering Sea/Aleutian Islands every year between 1980 and 2004 (except 2002).<sup>10</sup> However, these records, and RAM's official crab rationalization record for Mr. Williscroft, do not show that he made the required landings of crab for the specific QS he seeks.<sup>11</sup>

With respect to the Bristol Bay red king crab fishery, both the official crab rationalization record and the State records submitted by Mr. Williscroft show that Mr. Williscroft met the base year requirement. He participated in 3 of 5 seasons from 1996 to 2000 by harvesting Bristol Bay red king crab under his State of Alaska permit in 1996, 1997 and 1998. But he did not meet the recent year participation requirement of 2 of 3 seasons from 1999 to 2001. He did not participate in the Bristol Bay red king fishery in 1999, 2000 or 2001. Mr. Williscroft's State records show he participated in this fishery in 2003 but that season is after the recent participation seasons specified in the CRP rule.

With respect to the Bering Sea snow crab fishery, Mr. Williscroft met the base year requirement. He participated in 3 of 5 seasons from 1996 to 2000. He actually participated in 4 seasons: 1996, 1997, 1998 and 1999. But he did not meet the recent participation requirement of 2 of 3 seasons from 2000 to 2002. He participated only in 2001 and is therefore missing one season of participation. Mr. Williscroft's State records show he participated in this fishery in 2004, but this season is not a recent participation season specified in the CRP rule.

With respect to St. Matthew blue king crab, the situation is reversed. Mr. Williscroft met the recent participation requirement of 2 of 3 seasons before June 20, 2002 for the Eastern Aleutian brown king crab, the Western Aleutian brown king crab, the Bering Sea snow crab or the Bristol Bay red king crab. He participated in the brown king crab fishery in 2000<sup>12</sup> and the Bering Sea snow crab fishery in 2001. But Mr. Williscroft did not meet the base year requirement of participating in the St. Matthew blue king crab fishery in 3 of 5 years from 1994 to 1998. He participated only in 1997.

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<sup>8</sup> 50 C.F.R. § 680.40(b)(4)(iii).

<sup>9</sup> 50 C.F.R. § 680.40(b)(1)(ii) and 50 C.F.R. § 680.40(b)(3)(iii)(B) and (C).

<sup>10</sup> Fish ticket records for Mr. Williscroft from the State of Alaska Department of Fish And Game.

<sup>11</sup> "Summary of Official Record" for Mr. Williscroft and letter of Mr. Philip J. Smith(RAM) to Douglas Williscroft (Apr. 12, 2005).

<sup>12</sup> The State records show brown king, but they do not specify whether it was Eastern Aleutian or Western Aleutian brown king crab. Either meets one year of the recent participation requirement for St. Matthew blue king crab QS in Column D of Table 7 to Part 680.

Based on the preponderance of evidence, I find that Mr. Williscroft did not make the requisite landings of crab to qualify for catcher vessel crew QS in the Bristol Bay red king crab, Bering Sea snow crab, or St. Matthew blue king crab fisheries under the CRP.

Mr. Williscroft does not dispute any of the above facts in his appeal. Rather, he states that he has fished for crab in the Bering Sea and Aleutian Islands since 1974; that it would be an “incredible hardship” if he can no longer continue to fish for crab; and that he was not able to get a job to skipper a vessel during most of the crab QS qualifying years due to circumstances beyond his control.<sup>13</sup> Mr. Williscroft does not explain the circumstances which prevented him from crewing during the QS qualifying years, but a letter from his attorney suggests that the circumstance was the result of a business partner who “vetoed” having him work as master or mate of one of the partnership’s vessels.<sup>14</sup>

Even if all of that is true, the CRP regulations do not provide a hardship or special circumstance exception to the landing requirements for catcher vessel crew QS, other than for persons who died while working as part of a harvesting crew.<sup>15</sup> As an Administrative Judge, I am bound by the language of the regulations and do not have the authority to create an exception to the regulations. I conclude that Mr. Williscroft cannot qualify for the QS he seeks on appeal based on hardship or on a special or unavoidable circumstance.

I conclude that Mr. Williscroft does not qualify for catcher vessel crew QS in the Bristol Bay Red king crab, Bering Sea snow crab, or St. Matthew blue king crab fisheries under the CRP.

#### FINDING OF FACT

Mr. Williscroft did not make the requisite landings of crab to qualify for catcher vessel crew QS in the Bristol Bay red king crab, Bering Sea snow crab, or St. Matthew blue king crab fisheries under the CRP.

#### CONCLUSIONS OF LAW

1. Mr. Williscroft cannot qualify for QS based on hardship or special circumstance.
2. Other than for crew that died while working as part of a harvesting crew, the CRP regulations do not provide a hardship or special circumstance exception to the landing requirements for catcher vessel crew QS.

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<sup>13</sup>Mr. Williscroft’s letter to Office of Administrative Appeals (Dec. 19, 2005).

<sup>14</sup>Paul L. Anderson’s letter to RAM (May 30, 2005).

<sup>15</sup> 50 C.F.R. § 680.40(b)(3)(iii)(C)(2).

3. Mr. Williscroft does not qualify for catcher vessel crew QS in the Bristol Bay Red king crab, Bering Sea snow crab, and St. Matthew blue king crab fisheries under the CRP.

4. Mr. Williscroft does not qualify for catcher vessel crew QS in the Bristol Bay Red king crab, Bering Sea snow crab, or St. Matthew blue king crab fisheries under the CRP.

#### DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect August 20, 2008, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. § 679.43(o).

The Appellant or 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 July 31, 2008, the tenth day after 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 Administrative Judge, and must be accompanied by a written statement in support of the motion.

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Randall J. Moen  
Administrative Judge