

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 06-0002
)	
WALTER C. MEZICH,)	DECISION
Appellant)	
_____)	July 3, 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 December 1, 2007, that denied Mr. Mezich’s application for catcher vessel crew Quota Share (QS) in the Bristol Bay red king crab fishery under the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (CRP). RAM denied the application because the official crab rationalization record does not show that Mr. Mezich made the requisite legal landings to qualify for the QS.¹

Mr. Mezich 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. Mezich requests an oral hearing, but an oral hearing is not necessary nor 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 decide this appeal, and therefore the record is now closed. 50 C.F.R. §679.43(g)(2).

ISSUE

Does Mr. Mezich qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery?

ANALYSIS

The CRP regulations require NMFS to issue catcher vessel crew QS to a “qualified person” for

¹ The “official crab rationalization record” is defined as “the information prepared by the NMFS Regional Administrator 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 § 680.2] According to RAM, the “official crab rationalization 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]

each QS crab fishery based on “legal landings” of unprocessed crab.² To be a qualified person, in this case, Mr. Mezich must demonstrate that he made legal landings of Bristol Bay red king crab in at least three of the following “historical participation” crab seasons: November 1-5, 1996, November 1-5, 1997, November 1-6, 1998, October 15-20, 1999, or October 16-20, 2000; and in at least two of the following “recent participation” crab seasons: October 15-20, 1999, October 16-20, 2000, or October 15-18, 2001.³

In this case, the official crab rationalization record does not show that Mr. Mezich made the requisite legal landings for catcher vessel crew QS in the Bristol Bay red king crab fishery.⁴ Mr. Mezich does not dispute this, but claims that he would have qualified for the QS as captain of the F/V MARY J but for the owner’s decision to hire a different captain in 1999 and to not fish in 2001 because of economic reasons.⁵ In both cases, Mr. Mezich states that it was too late for Mr. Mezich to find another vessel for the fishing season.

Even if Mr. Mezich’s claims are true, he still would not qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery. Other than for crew members that died while working as part of a harvesting crew,⁶ the CRP regulations do not provide a hardship or special circumstance exception to the legal landing requirements for catcher vessel crew QS. Mr. Mezich’s reasons for not making the qualifying landings are therefore not adequate grounds for relief.

I conclude that Mr. Mezich does not qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery.

FINDING OF FACT

Mr. Mezich did not make the requisite legal landings of crab to qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery.

CONCLUSIONS OF LAW

1. The CRP regulations do not provide a hardship or special circumstance exception for Mr. Mezich to the legal landing requirements for catcher vessel crew QS in the Bristol Bay red king

² 50 C.F.R. § 680.40(b)(1)(ii).

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

⁴ IAD at 2.

⁵ Mr. Mezich’s appeal (June 1, 2005).

⁶ The exception applies only to the *recent participation* period (in Column D, Table 7, Part 680) and not the *historical participation* period (in Column C, Table 7, Part 680) of the landing requirements for catcher vessel crew QS. [See 50 C.F.R. § 680.40(b)(3)(iii)(C)(2)]

crab fishery.

2. Mr. Mezich does not qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect August 4, 2008, unless by that date the Regional Administrator takes further action pursuant to 50 § 679.43(o). Mr. Mezich 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 14, 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.

Randall J. Moen
Administrative Judge