

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0039
)	
ANCHOR TRADE &)	
DEVELOPMENT, INC.,)	DECISION
F/V GOLDEN SABLE)	
ADF&G # 40918)	
Appellant)	November 29, 1999
_____)	

STATEMENT OF THE CASE

When the Appellant applied for a Vessel Moratorium Qualification and Permit for the F/V GOLDEN SABLE as an “original qualifying vessel” under the Vessel Moratorium Program, it claimed that the vessel landed moratorium crab and moratorium groundfish from harvests with pot gear between February 10, 1992, and December 11, 1994.

In an Initial Administrative Determination (IAD) issued on April 12, 1996, the Restricted Access Management (RAM) Program¹ denied the Appellant’s application because its records did not show that the vessel made moratorium crab or groundfish landings during the moratorium qualifying period of January 1, 1988, through February 9, 1992. RAM issued the Appellant an interim Vessel Moratorium Permit for the F/V GOLDEN SABLE to fish moratorium crab and moratorium groundfish with pot gear, pending the outcome of a request for reconsideration or of an appeal by the Appellant.

In response to the IAD, the Appellant filed a request for reconsideration, and submitted several pieces of evidence to show that the F/V GOLDEN SABLE landed crab and groundfish in 1993 and 1994. On June 6, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM referred this case to this Office for filing as an appeal.

In a letter filed on appeal with this Office on June 18, 1996, the Appellant claims that when it purchased the F/V GOLDEN SABLE in 1992 it was told the vessel qualified for moratorium rights under the Vessel Moratorium Program. The Appellant also seeks relief on the basis that the vessel is “worthless” without moratorium rights, and that Magne Nes (the President of Anchor Trade & Development, Inc.) is one of the “pioneers” of Alaska fishing.

The Appellant produced the following additional documents on appeal:

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

- (1) Mr. Nes' personal resume;
- (2) a U.S. Coast Guard Certificate of Documentation for the F/V GOLDEN SABLE;
- (3) a statement from the Alaska Department of Fish & Game verifying that crab landings were made from the F/V PACIFIC INVADER between 1980 and 1985;
- (4) a letter dated June 13, 1997, from Mr. Nes, stating that he and his wife purchased the F/V GOLDEN SABLE in May 1992, and that they were entitled to the moratorium rights the vessel acquired under the "rules and regulations" of the Vessel Moratorium Program in January 1992;
- (5) a copy of the proposed rules of the Vessel Moratorium Program (dated June 3, 1994) in the Federal Register, which showed that vessels would qualify for moratorium rights if landings of moratorium species were made between *January 1, 1980, and February 9, 1992*; and
- (6) a copy of an undated special report, entitled "Time Out," from the North Pacific Fishery Management Council, which states that *if the Secretary of Commerce approves of the proposed moratorium*, all vessels that legally landed crab, halibut, or groundfish *between January 1, 1980, and February 9, 1992*, would qualify for a fishing permit under the Vessel Moratorium Program.

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 GOLDEN SABLE entitled to a Vessel Moratorium Qualification and Permit as an "original qualifying vessel" to fish moratorium crab or moratorium groundfish?

PRINCIPLES OF LAW

1. To obtain a Vessel Moratorium Qualification and Permit under the Vessel Moratorium Program to fish for "moratorium crab" or "moratorium groundfish," as an "original qualifying vessel," the vessel must have made at least one legal landing of moratorium crab or moratorium groundfish, between January 1, 1988, and February 9, 1992. 50 C.F.R. § 679.4(c)(7)(i).
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. “Moratorium groundfish” means species of groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in the Bering Sea/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.

4. The Vessel Moratorium Program was adopted on August 10, 1995. *See*, Fed. Reg. 40,763-40, 775 (August 10, 1995).

DISCUSSION

The Appellant’s evidence, and RAM’s records, do not show that the F/V GOLDEN SABLE made moratorium crab or moratorium groundfish landings during the period January 1, 1988, through February 9, 1992. The Appellant’s evidence shows only that crab or groundfish landings were made from the F/V GOLDEN SABLE between 1980 and 1985, and in 1993 and 1994. Therefore, I find that the F/V GOLDEN SABLE did not make moratorium crab or moratorium groundfish landings during January 1, 1988 through February 9, 1992.

The regulations of the Vessel Moratorium Program, which were adopted in August 1995, clearly provide that a vessel must have been made landings of moratorium crab or moratorium groundfish during the moratorium qualifying period of January 1, 1988 through February 9, 1992, in order for the vessel to be considered an “original qualifying vessel.” While different moratorium qualifying periods may have been proposed by the North Pacific Management Fishery Council or the National Marine Fisheries Service, reliance upon those proposals is not an adequate basis for qualifying a vessel for moratorium rights. Nor is financial hardship, or the pioneering of the fishing of crab or groundfish in the waters off Alaska.

In light of all of the above, I conclude that the F/V GOLDEN SABLE is not entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium crab or moratorium groundfish.

FINDING OF FACT

The F/V GOLDEN SABLE did not land moratorium crab or moratorium groundfish during the January 1, 1988, through February 9, 1992.

CONCLUSION OF LAW

The F/V GOLDEN SABLE is not entitled to a Vessel Moratorium Qualification and Permit as an

“original qualifying vessel” to fish moratorium crab and moratorium groundfish.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect on December 29, 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 December 9, 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