

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 96-0057  
)  
JOSEPH K. DONAHUE, )  
F/V STORM FRONT ) DECISION  
ADF&G # 37833 )  
Appellant )  
\_\_\_\_\_ ) November 29, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on February 23, 1996, the Restricted Access Management (RAM) Program<sup>1</sup> approved Mr. Donahue's application for a Vessel Moratorium Permit for the F/V STORM FRONT as an "original qualifying vessel" under the Vessel Moratorium Program. RAM endorsed the vessel's permit to fish moratorium groundfish with pot, trawl, and hook gear, but it did not endorse the vessel's permit to fish moratorium crab with pot gear, because RAM's records did not show that the vessel made crab landings from harvests in the Bering Sea/Aleutian Islands [BS/AI]. RAM issued an interim Vessel Moratorium Permit for the vessel to fish moratorium crab with pot gear and moratorium groundfish with hook, trawl, and pot gear, pending a request for reconsideration or an appeal by Mr. Donahue.

On June 12, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM determined that Mr. Donahue's evidence [a state fish ticket printout from the Alaska Department of Fish & Game (ADF&G)] did not show that the F/V STORM FRONT made moratorium crab (king or Tanner) landings from harvests 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.

ISSUE

Is the Vessel Moratorium Permit of the F/V STORM FRONT entitled to an endorsement to harvest moratorium crab with pot gear?

PRINCIPLES OF LAW

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

1. Under the regulations of the Vessel Moratorium Program, the Vessel Moratorium Permit of an “original qualifying vessel” will be endorsed to fish moratorium crab with pot gear, if the vessel made at least one legal landing of (1) moratorium crab with pot gear between January 1, 1988, and February 9, 1992; (2) moratorium groundfish with pot, trawl, or hook gear between January 1, 1988, and February 9, 1992, and a legal landing of moratorium crab between February 10, 1992, and December 11, 1994; or (3) moratorium groundfish with pot gear between January 1, 1988, and February 9, 1992. 50 C.F.R. § 679.4(c)(5)(i).
2. “Moratorium crab” means king or Tanner crab harvested in the BS/AI [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 BS/AI, [while commercial fishing under federal regulations]. 50 C.F.R. § 679.2.
4. An “original qualifying vessel” means a vessel that made a legal landing during the moratorium qualifying period of January 1, 1988, through February 9, 1992. 50 C.F.R. § 679.2.

#### DISCUSSION

The evidence in the record does not show that the F/V STORM FRONT landed crab as a result of harvests from the BS/AI, or landed groundfish with pot gear between January 1, 1988, and February 9, 1992. While Mr. Donahue submitted ADF&G catch records of the F/V STORM FRONT, the catch records do not show that crab harvests were made in the BS/AI or that groundfish landings were harvested with pot gear during the relevant period. In light of this, I find the weight of evidence shows that the F/V STORM FRONT did not land crab from harvests made in the BS/AI, or land groundfish from harvests with pot gear between January 1, 1988, and February 9, 1992. Therefore, I conclude that the Vessel Moratorium Permit of the F/V STORM FRONT is not entitled to an endorsement to fish moratorium crab with pot gear.

#### FINDING OF FACT

The F/V STORM FRONT did not land crab from harvests made in the BS/AI, or land groundfish from harvests with pot gear between January 1, 1988, through February 9, 1992.

#### CONCLUSION OF LAW

The Vessel Moratorium Permit of the F/V STORM FRONT is not entitled to an endorsement to fish moratorium crab with pot gear.

## 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.

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Randall J. Moen  
Appeals Officer