

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
)
DAVID PEDERSEN)
F/V FAT EMMA)
ADF&G # 38229)
Appellant)
_____)
Appeal No. 96-0064

DECISION

October 25, 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. Pedersen's claim for a crab endorsement on his Vessel Moratorium Qualification and Permit under the Vessel Moratorium Program on Groundfish and Crab.¹ RAM reaffirmed its earlier IAD of March 18, 1996. 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. Pedersen entitled to an endorsement to harvest moratorium crab on his Vessel Moratorium Qualification and Permit?

BACKGROUND

David Pedersen submitted an application for a Vessel Moratorium Qualification and Permit on

¹ The Vessel Moratorium Program for Groundfish and Crab is found at 50 C.F.R. § 679.4(c). The program was extended through December 31, 1999 and expires on that date. *See* 64 Fed. Reg. 3651-3653 (January 25, 1999). This decision applies to Mr. Pedersen's rights under the Moratorium Program. **Specifically, this decision does not apply to the North Pacific License Limitation Program (LLP) which is found at 50 C.F.R. § 679.4(k).** The LLP applies to fishing for 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. Pedersen may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2).

² 50 C.F.R. § 679.43.

February 16, 1996 to the Restricted Access Management program. Mr. Pedersen's application claimed that he made landings of moratorium crab and groundfish from the F/V FAT EMMA using trawl, hook and pot gear between January 1, 1988 and February 9, 1992. RAM's Official Record for the Moratorium Program showed that Mr. Pedersen was entitled to a Moratorium Qualification and Permit with endorsements to harvest moratorium groundfish with hook, trawl and pot gear. The Official Record did not indicate, however, that Mr. Pedersen was entitled to an endorsement to harvest moratorium crab species.³

RAM made an Initial Administration Determination on March 20, 1996 that Mr. Pedersen was not entitled to a crab endorsement. The IAD stated that the RAM database did not show landings of moratorium crab species with pot gear from the F/V FAT EMMA between January 1, 1988 and February 9, 1992. The IAD also informed Mr. Pedersen of his right to ask RAM to reconsider its decision or to appeal RAM's determination to this Office.

On May 8, 1996, Mr. Pedersen asked RAM to reconsider its determination. With his request, he submitted a copy of three fish tickets showing landings of Tanner crab between January 1, 1988 and February 9, 1992 in the Gulf of Alaska. RAM considered this evidence and, in its Reconsideration on June 19, 1996, denied Mr. Pedersen's claim for a crab endorsement. The basis for RAM's determination was that the fish tickets did not show landings in the Bering Sea and Aleutian Islands area.

DISCUSSION

The Moratorium Program limits fishing for moratorium groundfish and moratorium crab species through December 31, 1999. Moratorium groundfish species are groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in the Bering Sea and Aleutian Islands areas.⁴ Moratorium crab species are Tanner and king crab harvested in the Bering Sea and Aleutian Islands area.⁵

³ RAM's Official Record for the Moratorium Program did not itself contain landings histories. RAM created its Official Record for the Moratorium Program based on information obtained from the North Pacific Fisheries Management Council. The Council staff reviewed landings histories and prepared a list of the vessels it concluded were qualified and what endorsements the applicants should receive. RAM adopted the Council's determinations as part of its Official Record for the Moratorium Program. [Memorandum (e-mail) from Phil Smith, RAM Program Director, to Mary Alice McKeen, September 28, 1999.]

⁴ The full definition of moratorium groundfish species is "species of groundfish, except sablefish caught with fixed gear, harvested in the GOA or in the BSAI, the commercial fishing of which is governed by this part." 50 C.F.R. § 679.2.

⁵ 50 C.F.R. § 679.2.

To receive a crab endorsement on a Vessel Moratorium Qualification and Permit, federal regulation 50 C.F.R. § 679.4(c)(5) requires that an applicant must show one of the following:

[1] a legal landing of moratorium crab species in the Bering Sea and Aleutian Islands area (BSAI) in period 1, which is January 1, 1988 to February 9, 1992,

OR

[2] a legal landing of moratorium groundfish species in BSAI or the Gulf of Alaska (GOA) in period 1 (January 1, 1988 to February 9, 1992) and a legal landing of moratorium crab species in BSAI in period 2, which is February 20, 1992 to December 11, 1994,

OR

[3] a legal landing of moratorium groundfish species with pot gear in GOA or BSAI in period 1 (January 1, 1988 to February 9, 1992).

The Official Record does not show that Mr. Pedersen has the landings necessary for a crab endorsement. Neither does the evidence submitted by Mr. Pedersen. The fish tickets submitted by Mr. Pedersen do not show any landings of crab in BSAI or any landings of groundfish with pot gear in BSAI or the Gulf of Alaska. The fish tickets show Tanner crab landings in the Gulf of Alaska. Therefore I conclude that Mr. Pedersen is not entitled to receive an endorsement to harvest crab on his Vessel Moratorium Qualification or Permit

This Decision does not affect Mr. Pedersen's ability to participate in the crab fishery in the Gulf of Alaska because the Moratorium Program does not regulate this fishery. This Decision also does not interfere with Mr. Pedersen's continued ability to participate in the moratorium groundfish fishery in the Gulf of Alaska or BSAI because RAM never disputed that Mr. Pedersen was entitled to a moratorium permit to harvest groundfish with pot, trawl and hook gear. The moratorium permit is valid through December 31, 1999, when the Moratorium Program expires.

FINDING OF FACT

Mr. Pedersen did not make the landings of moratorium crab or groundfish which are necessary for a crab endorsement on his Vessel Moratorium Qualification and Permit.

CONCLUSION OF LAW

Mr. Pedersen is not entitled to a crab endorsement on his Vessel Moratorium Qualification and Permit.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect November 24, 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, November 4, 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