

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0070
)
MATT SHADLE)
F/V RISKY BUSINESS) DECISION
ADF&G # 31837)
Appellant)
_____) November 29, 1999

STATEMENT OF THE CASE

In an Initial Administrative Determination (IAD) issued on March 18, 1996, the Restricted Access Management (RAM) Program¹ approved Mr. Shadle's application for a Vessel Moratorium Permit for the F/V RISKY BUSINESS as an "original qualifying vessel" under the Vessel Moratorium Program. RAM determined, however, that the vessel was not eligible for a crab endorsement because its records did not show that the vessel made crab landings from harvests in the Bering Strait or Aleutian Islands [BS/AI], or groundfish landings with pot gear between January 1, 1988, and February 9, 1992. RAM issued an interim Vessel Moratorium Permit to Mr. Shadle for the vessel to fish moratorium crab and moratorium groundfish, pending a request for reconsideration or an appeal by Mr. Shadle.

Mr. Shadle requested reconsideration of the IAD, and in support of that request, he submitted a letter to RAM, reaffirming that the F/V RISKY BUSINESS had landed crab between 1988 and 1992. No state fish tickets were submitted for the record.

On January 16, 1997, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM determined that Mr. Shadle's evidence was insufficient. 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 RISKY BUSINESS entitled to an endorsement to fish moratorium crab with pot gear?

PRINCIPLES OF LAW

¹The 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, hook, or trawl gear between January 1, 1988, and February 9, 1992; 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 Bering Strait/Aleutian Islands (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

Mr. Shadle’s claim in his letter is not sufficient evidence to show that the F/V RISKY BUSINESS made at least one legal landing of crab in the BS/AI, or groundfish with pot gear between January 1, 1988, and February 9, 1992. A state fish ticket is required in this instance to show that the vessel made a relevant and credible legal landing.² Mr. Shadle did not produce a state fish ticket, or for that matter, any other evidence showing landings of any kind from the F/V RISKY BUSINESS during the relevant period..

In light of this, I find that the weight of the evidence shows that the F/V RISKY BUSINESS did not land crab from harvests made in the BS/AI, or land groundfish with pot gear during January 1, 1988, through February 9, 1992. Therefore, I conclude that the Vessel Moratorium Permit for the vessel is not entitled to an endorsement to fish moratorium crab with pot gear.

FINDING OF FACT

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

²See, John Nelson, Jr. F/V OUT FOX, Appeal No. 97-0004, December 29, 1999, in which we stated that a state fish ticket is required to show a legal landing of a moratorium species (in the absence of such a landing in RAM’s records).

CONCLUSION OF LAW

The Vessel Moratorium Permit of the F/V RISKY BUSINESS 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.

Randall J. Moen
Appeals Officer