

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 97-0006
)	
FEDOSEY EGOROFF)	DECISION
F/V GOLUB E.F.)	
ADF&G # 53798)	October 18, 1999
Appellant)	
_____)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on Reconsideration on May 14, 1997, which denied Mr. Egoroff's application for a Vessel Moratorium Qualification and Permit (VMQ&P) under the Vessel Moratorium Program on Groundfish and Crab.¹ The Reconsideration affirmed RAM's earlier IAD of January 13, 1997. The basis for both IADs was that Mr. Egoroff did not show that his vessel had made any landings of moratorium species between January 1, 1988 and February 9, 1992. RAM referred this case to this Office for filing as an appeal.

ISSUE

Is Mr. Egoroff entitled to receive a Vessel Moratorium Permit under the Vessel Moratorium Program on Groundfish and Crab?

BACKGROUND

Mr. Egoroff filed an application for a Vessel Moratorium Qualification and Permit on December 24, 1996. He claimed he had landed moratorium groundfish with hook gear in period 1 (January 1, 1988

¹ This decision applies to Mr. Egoroff's rights under the Vessel Moratorium Program for Groundfish and Crab, which is found at 50 C.F.R. § 679.4(c). It governs Mr. Egoroff's ability to harvest moratorium species through December 31, 1999. The Moratorium Program expires on December 31, 1999. See 64 Fed. Reg. 3651-3653 (January 25, 1999). The Moratorium Program should not be confused with 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 Straits/Aleutian Islands areas and certain species of crab in the Bering Sea/Aleutian Islands area. **The application period for LLP runs from September 13, 1999 through December 17, 1999. For further information on the License Limitation Program, Mr. Egoroff may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2).**

through February 9, 1992) and period 2 (February 10, 1992 through December 11, 1994) from the F/V GOLUB E.F.

RAM stated in its IAD of January 13, 1997 that it was unable to verify the landings claimed by Mr. Egoroff and therefore denied his application. Mr. Egoroff asked RAM to reconsider its decision and submitted a carbon copy of a fish ticket showing landings of sablefish, redrockfish, halibut, arrowtooth flounder, gray cod, shark and skate in Homer with gear type "1" on May 30, 1994 from the F/V GOLUB E.F. Mr. Egoroff also submitted an Account Detail from Inlet Fish Producers, Inc., in the name of Peter Egoroff for the F/V GOLUB E.F. for the period January 1, 1994 through December 31, 1994.

RAM considered this evidence and, in its Initial Administrative Determination on Reconsideration of June 6, 1996, affirmed its denial of Mr. Egoroff's claim. RAM explained that Mr. Egoroff had not shown landings of moratorium crab or groundfish species between January 1, 1988 and February 9, 1992.

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.

DISCUSSION

The Vessel Moratorium Program on Groundfish and Crab limits fishing for certain species of crab in the Bering Sea and Aleutian Islands (BSAI) area and certain species of groundfish in the Gulf of Alaska (GOA) and BSAI areas through December 31, 1999. The moratorium species of crab are Tanner and king crab harvested in BSAI.² The moratorium groundfish species are groundfish, except sablefish caught with fixed gear, harvested in the GOA or BSAI³

The regulations for the Moratorium Program require two steps in deciding an application. First, RAM

² 50 C.F.R. § 679.2.

³ 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. Groundfish means "target species and the 'other species' category, specified annually pursuant to § 670.20(a)(2)." *Id.* Pursuant to 50 C.F.R. § 670.20(a)(2), NMFS, after consultation with the North Pacific Fisheries Management Council, sets annual total allowable catch (TAC) and reserves for certain species of fish. The TAC figures are published annually in the Federal Register. Halibut is not specified as a groundfish under this process. *See, e.g.*, 55 Fed. Reg. 3223 - 3229 (January 31, 1990) (1990 fishing year); 56 Fed. Reg. 6290 - 6296 (February 15, 1991)(1991 fishing year); 57 Fed. Reg. 2844 - 2851 (January 24, 1992)(1992 fishing year).

determines whether a vessel is qualified to participate in the moratorium. A vessel has “moratorium qualification” by its own landings or by transfer of a qualification from another vessel.⁴ Mr. Egoroff makes no allegation of a transfer. So the only way the F/V GOLUB E.F. could be a qualified vessel is by its own landings. Federal regulation 50 C.F.R. § 679.4(c)(7)(i) specifies that these landings must be of moratorium species and must have occurred between January 1, 1988, and February 9, 1992. This is the qualifying period.

If and only if the vessel has moratorium qualification, RAM proceeds to the second step: which species the vessel can harvest and what gear the vessel can use in that harvest. Four different gear endorsements are possible. A vessel can receive the right to harvest moratorium crab with pot gear, moratorium groundfish with pot gear, moratorium groundfish with hook gear or moratorium groundfish with trawl gear. The end of this process is the issuance (or denial) of a Federal Vessel Moratorium Permit and a Certificate of Moratorium Qualification for a specific vessel with particular gear endorsements.⁵

Federal regulation 50 C.F.R. § 679.4(c)(5) contains the gear endorsement criteria. A landing of moratorium crab in period 1 (January 1, 1988 through February 9, 1992) will give the applicant a crab endorsement. A landing a moratorium groundfish with hook, pot or trawl gear in period 1 will give the applicant endorsements to harvest moratorium groundfish with hook, pot and trawl gear. It is true that, in some circumstances, an applicant can gain an additional gear endorsement from a landing in period 2 (February 10, 1992 through December 11, 1994) but that is only if the applicant also had a landing in period 1.⁶

Neither RAM’s Official Record nor the evidence submitted by Mr. Egoroff indicate that the F/V WHITE NIGHT made any landings of moratorium crab or groundfish species between January 1, 1988 and February 9, 1992. At best, the only landing shown by Mr. Egoroff is of moratorium groundfish

⁴ 50 C.F.R. § 679.4(c)(7)

⁵ Because of the need for vessel owners to show that their vessel had “moratorium qualification,” RAM began issuing an actual Certificate of Moratorium Qualification with gear endorsements, in addition to the vessel moratorium permits. RAM issues a transferable Certificate of Moratorium Qualification, if RAM and the applicant have no dispute over whether the vessel is qualified and what gear endorsements the vessel should receive. If RAM and the applicant disagree, RAM issues a non-transferable qualification and an interim vessel moratorium permit, giving the applicant what was claimed on the application. *See* 50 C.F.R. § 679.4(c)(10). RAM did this with Mr. Egoroff.

⁶ For example, under 50 C.F.R. § 679.4(c)(5), if a vessel had a landing of moratorium groundfish in period 1 only, it would receive a gear endorsement to harvest moratorium groundfish with trawl, pot and hook gear. If, in addition, it had a landing of moratorium crab in period 2, a crab endorsement would be added to the permit.

with hook gear in May 1994 in the Gulf of Alaska.⁷ This landing is outside the qualifying period⁸ and, in the parlance of the gear endorsement regulation, is a “period 2 landing.” Mr. Egoroff’s landing, by itself, does not under any circumstances lead to the award of a vessel moratorium qualification or permit.

Therefore I conclude that the F/V GOLUB E.F. is not a qualified vessel and that Mr. Egoroff is not entitled to receive a vessel moratorium permit.

FINDING OF FACT

No legal landings of moratorium species were made from Mr. Egoroff’s vessel, the F/V GOLUB E.F., between January 1, 1988 and February 9, 1992.

CONCLUSION OF LAW

Mr. Egoroff is not entitled to receive a vessel moratorium permit under the Vessel Moratorium Program for Groundfish and Crab.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect November 18, 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, October 28, 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.

⁷ The fish ticket provided by Mr. Egoroff appears to show landings of moratorium groundfish species, namely redrockfish, arrowtooth flounder and gray cod in GOA. These are groundfish under the process under the process explained in note 3 *supra*. The fish ticket has a gear code “1.” The Alaska Department of Fish and Game Code list, printed in 1996, lists “1” as purse seine. This appears to have been the gear code for purse seine since at least 1982. [Memorandum to File re Call to ADF&G Biologist David Petree, September 30, 1999] Therefore, in addition to being the wrong time period, the fish ticket might not assist the F/V GOLUB E.F. because it might be the wrong gear type. This issue need not be resolved because any 1994 landings are outside the qualifying period (January 1, 1988 through February 9, 1992).

⁸ 50 C.F.R. § 679.4(c)(7)(i).

Mary Alice McKeen
Appeals Officer