

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 06-0009
)	
ERNEST SVASAND,)	DECISION
Appellant)	
)	July 21, 2008
_____)	

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program of the National Marine Fisheries Service (NMFS) issued an Initial Administrative Determination (IAD) on February 21, 2006, that denied Mr. Svasand’s application for catcher vessel crew Quota Share (QS) in the Bristol Bay red king crab fishery under the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (CRP).¹ RAM denied the application because the official Crab Rationalization Record does not show that he made the required legal landings for the QS.²

Mr. Svasand filed a timely appeal of the IAD. His interests are directly and adversely affected by the IAD, as required by 50 C.F.R. § 679.43(b). Mr. Svasand requests an oral hearing, but a hearing is neither necessary nor authorized in this case because the factual issues raised by Mr. Svasand, even if resolved in his favor, would not be adequate to justify granting the relief he seeks.³ The record contains sufficient information to render a decision in this appeal, and so the record is now closed, as provided in 50 C.F.R. § 679.43(k).

¹ Final Rule, 70 Fed. Reg. 10174 (Mar. 2, 2005). This rule, and subsequent amendments, are primarily at 50 C.F.R. Part 680, available online at the NMFS Alaska Region website: <http://alaskafisheries.noaa.gov/regs/summary.htm>.

² The “official Crab Rationalization Record” is defined in 50 C.F.R. § 680.2 as “the information prepared by the Regional Administrator [of NMFS] about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.” According to RAM, the “official Crab Rationalization Record” is a comprehensive data base that contains relevant information on the BSAI crab fisheries, including permit holder and fish ticket landing files, processing information, and other data required for properly assigning harvesting and processing histories to qualified persons and calculating the amounts of QS and Processor QS to which they are entitled. The information in the official CRP record is derived from a variety of sources, including the Alaska Department of Fish and Game, the Commercial Fisheries Entry Commission, the Alaska Department of Revenue, and NOAA Fisheries Service (NMFS). [General Guidelines for Preparing Applications, BSAI Crab Rationalization - “Instructions for Applying for QS and PSQ” - April 2005].

³ 50 C.F.R. §679.43(g)(3)(iv).

ISSUE

Does Mr. Svasand qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery under the Crab Rationalization Program?

ANALYSIS

To qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery, Mr. Svasand must demonstrate that he made at least one legal landing of Bristol Bay red king crab in three of the five base period crab seasons: November 1 - 5, 1996; November 1 - 5, 1997; November 1 - 6, 1998; October 15 - 20, 1999; and October 16 - 20, 2000; and in two of the three recent participation crab seasons: October 15 - 20, 1999; October 16 - 20, 2000; and October 15 - 18, 2001.⁴

Mr. Svasand's fishing history from the State of Alaska shows that he satisfies the base period requirement, but not the recent participation requirement, for Bristol Bay red king crab QS.⁵ The fishing history shows, however, that Mr. Svasand does not satisfy the recent participation period requirement because he made landings of Bristol Bay red king crab in 1999, but not in 2000 or 2001.⁶

Mr. Svasand states that he has been fishing king crab since 1976; that he has been the skipper of the F/V STARFISH since 1982 (except for 1994, 1995, and 2000); and that fishing for crab is his livelihood.⁷ He claims that he made one landing of Bristol Bay red king crab with the F/V STARFISH in 2001 as the vessel's skipper, but forgot to stamp the fish ticket with his State of Alaska Interim Use Permit.⁸ Mr. Svasand presented State of Alaska Crab Shellfish Ticket #015753, which shows a landing of Bristol Bay red king crab on October 20, 2001. However, the State of Alaska Interim Use Permit imprinted on the ticket belongs to Steinar Mannes, not Mr. Svasand.

⁴ 50 C.F.R. §§ 680.40(b)(1)(ii) and 680.40(b)(3)(iii)(B) and (C); columns C and D, Table 7 to Part 680 - Initial Issuance of QS by Crab QS Fishery.

⁵ Fish Ticket Data Report for Mr. Svasand, 1996-1999, and 2001-2004, Alaska Department of Fish and Game.

⁶ *Id.*

⁷ Mr. Svasand's letter to RAM Program Administrator Philip J. Smith (Apr. 19, 2006).

⁸ Mr. Svasand's letter to RAM Program Administrator Philip J. Smith (Apr. 19, 2006). Mr. Svasand produced a State of Alaska Bristol Bay Red King Crab preseason vessel registration form for the F/V STARFISH, which shows that Mr. Svasand had a State of Alaska Interim Use permit when the vessel made the crab landing in October 2001. The vessel registration form is imprinted with Mr. Svasand's permit and dated September 19, 2001.

According to Mr. Svasand, Mr. Mannes served as the skipper's mate at that time.⁹ Unfortunately for Mr. Svasand, even if that is true, it would not enable him to receive credit for this landing because his recent participation can only be demonstrated if his own Interim Use Permit and signature appear on the fish ticket. A "qualified person" under the CRP is defined, in part, as one who "has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska."¹⁰

A State of Alaska fish ticket is the only kind of evidence that an applicant for catcher vessel crew QS can use to demonstrate the required legal landings for crab QS.¹¹ Mr. Svasand has not produced a State of Alaska fish ticket (or data from fish tickets maintained by the State of Alaska) that shows he made a legal landing of Bristol Bay red king crab under his State of Alaska Interim Use permit in 2001 or 2000. Mr. Svasand states that he did not fish in 2000 due to family matters.¹² The CRP regulations do not provide a hardship or special circumstance exception to the legal landing requirements for catcher vessel crew QS, other than for persons who died while working as part of a harvesting crew.¹³

I conclude that Mr. Svasand did not make the requisite legal landings to qualify for catcher vessel crew crab QS in the Bristol Bay red king crab fishery, and that he does not qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery under the CRP.

FINDING OF FACT

I find by a preponderance of the evidence in the record that Mr. Svasand does not have a State of Alaska fish ticket (or data from fish tickets maintained by the State of Alaska) that shows he made a legal landing of Bristol Bay red king crab under his State of Alaska Interim Use permit in 2001.

⁹ Mr. Svasand's letter to RAM, received July 7, 2005. Mr. Svasand produced another fish ticket (State of Alaska Crab Shellfish Ticket, #007052) showing the landing of Bristol Bay red king crab by Mr. Mannes in October 2000.

¹⁰ 50 C.F.R. § 680.40(b)(3)(iii)(C)

¹¹ 50 C.F.R. § 680.40(b)(4)(iii) provides: "Evidence of legal landings shall be limited to State of Alaska fish tickets."

¹² Mr. Svasand's letter to RAM, received July 7, 2005.

¹³ 50 C.F.R. § 680.40(b)(3)(iii)(C)(2).

CONCLUSIONS OF LAW

1. Mr. Svasand did not make the requisite legal landings of crab to qualify for catcher vessel crew crab QS in the Bristol Bay red king crab fishery under the CRP.
2. The CRP regulations do not provide a hardship or special circumstance exception to the legal landing requirements for catcher vessel crew QS, other than for persons who died while working as part of a harvesting crew.
3. Mr. Svasand cannot qualify for the QS he seeks on appeal based on hardship or special circumstances.
4. Mr. Svasand does not qualify for catcher vessel crew QS in the Bristol Bay red king crab fishery under the CRP.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect August 20, 2008, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. § 679.43(o).

The Appellant or 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 July 31, 2008, the tenth day after 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 Administrative Judge, and must be accompanied by a written statement in support of the motion.

Randall J. Moen
Administrative Judge

