NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 05-0011
	)	
NORMAN URSIN	)	DECISION
Appellant	)	
	)	October 14, 2008

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program of the National Marine Fisheries Service (NMFS) issued an Initial Administrative Determination (IAD) that denied Norman Ursin's application for Processor Quota Share (PQS) on behalf of Ursin Seafoods and Great Alaskan Fish Company under the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (CRP).[1] RAM denied the application because the evidence in the official crab rationalization record,[2] and the evidence produced by Mr. Ursin, do not indicate that he or his companies qualify for PQS.[3]

Mr. Ursin filed a timely appeal of the IAD.[4] His interests are directly and adversely affected by the IAD.[5] Mr. Ursin did not request an oral hearing, nor do the regulations authorize an oral hearing in this case because there is not a genuine and substantial issue of adjudicative fact for

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[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" (CRR) is defined as "the information prepared by the Regional Administrator about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40." [50 C.F.R § 680.2] According to RAM, the CRR 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 CRR 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] IAD at 3-4.

[4] E-mail from Ed Hein to Steve Hinckle regarding "Ursin Seafoods appeal (Jan. 9, 2006); and Philip J. Smith's letter to Mr. Ursin (Jan. 6, 2006).

[5] 50 C.F.R. § 679.43(b).

resolution at a hearing.[6] The record contains sufficient information to decide this appeal, and therefore the record is now closed.[7]

ISSUE

Does Mr. Ursin qualify for Processor Quota Share under the Crab Rationalization Program?

ANALYSIS

The CRP regulations provide for Mr. Ursin to be considered a qualified person for PQS if the official crab rationalization record shows that he (or his company) legally processed any crab QS species during 1998 or 1999.[8] The official crab rationalization record does not show that Mr. Ursin or his companies legally processed any QS crab species in 1998 or 1999.[9]

Mr. Ursin does not dispute this, but he can still be considered a qualified person for PQS if he can demonstrate that he or his company, Ursin Seafoods, Inc.,

> (1) processed Bering Sea snow crab in each season for that fishery during the period 1988 through 1997; and
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> (2) invested more than $1,000,000 in a processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing processing facilities, from January 1, 1996, through June 10, 2002;[10] or acquired the fishing history of legally processed crab in 1998 or 1999 based on the express terms of a written contract that clearly and unambiguously shows that the fishing history was transferred to him.[11]

The CRP regulations limit proof of *legal processing* to a State of Alaska fish ticket, except that:

> (A) NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or evidence of direct payment from a receiver of crab to a harvester if that information indicates that the buyer of

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[6] 50 C.F.R. §679.43(g)(3)(i).

[7] 50 C.F.R. §679.43(g)(2).

[8] 50 C.F.R § 680.40(d)(3)(i).

[9] IAD at 1.

[10] 50 C.F.R § 680.40(d)(3)(ii)(A) and (B).

[11] 50 C.F.R § 680.40(d)(3)(ii)(C).

crab differs from the receiver indicated on State of Alaska fish ticket records; however:

(B) Information on State of Alaska fish tickets shall be presumed to be correct for the purpose of determining evidence of legal processing of crab. An applicant will have the burden of proving the validity of information submitted in an application that is inconsistent with the information on the State of Alaska fish ticket.[12]

Mr. Ursin does not claim on his application for PQS, nor did he provide evidence, that he legally processed Bering Sea snow crab during each fishing season between 1988 and 1997. He only claimed on his application for PQS,[13] and produced evidence,[14] that he legally processed Bering Sea snow crab in each year between 1988 and 1992. Because of this, I conclude that Mr. Ursin does not satisfy the legal requirements for PQS under the CRP regulations.

Mr. Ursin argues that he should be granted an exception to the CRP regulations on grounds that (1) Ursin Seafoods is the only 100% Alaska family-owned and privately managed company involved in the processing of shellfish in Alaska; (2) his company is the only BSAI seafood processor adversely impacted by the CRP regulations; (3) he has been processing fish for nearly 50 years in Alaska; (4) he has been excluded from the CRP for "no apparent reason;" and (5) his competitors influenced the development of the CRP regulations to profit at his expense.

The CRP regulations do not provide an exception to the requirements for PQS on the grounds claimed by Mr. Ursin. As an Administrative Judge, I am bound by the language of the regulations and do not have authority to grant an exception to the regulations when none is provided. My job is to interpret and apply the regulations, not to question the fairness, wisdom, or policy of the regulations.[15]

I conclude that Mr. Ursin does not qualify for Processor Quota Share under the Crab Rationalization Program

FINDINGS OF FACT

Based on a preponderance of the evidence in the administrative record, I find that:

1. Mr. Ursin did not legally process any QS crab species in 1998 or 1999.

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[12] 50 C.F.R § 680.40(d)(4)(iv)(A) and (B).

[13] Mr. Ursin's application for PQS at 6.

[14] Document entitled "Bering Sea Crab Deliveries Ursin Seafoods."

[15] *See, e.g., George M. Ramos*, Decision on Review, Appeal No. 94-0008, at 4-5 (Apr. 21, 1995).

2. Mr. Ursin processed Bering Sea snow crab during each season for that fishery from 1988 through 1992; he did not process Bering Sea snow crab from 1993 through 1997.

3. The CRP regulations do not provide an exception to the requirements for Processor Quota Share on the grounds claimed by Mr. Ursin.

CONCLUSIONS OF LAW

1. Mr. Ursin does not satisfy legal requirements for PQS under the CRP regulations.

2. As an Administrative Judge, I am bound by the language of the regulations and do not have authority to grant an exception to the regulations when none is provided.

3. Mr. Ursin does not qualify for Processor Quota Share under the Crab Rationalization Program.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect on November 13, 2008, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. §679.43(o).

Mr. Ursin 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 24, 2008. 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

Randall J. Moen
Administrative Judge