

SUPREME COURT OF ALASKA

May v. State, Commercial Fisheries Entry Commission

175 P.3d 1211 (Alaska 2007) · No. Nos. S-12451, S-12452 · Decided December 21, 2007

SUMMARY

Bert May challenged the Commercial Fisheries Entry Commission’s denial of his applications for entry permits in Alaska’s Southern Southeast Inside sablefish longline and pot fisheries. The Alaska Supreme Court held that CFEC lacked substantial evidence to determine that May was ineligible to apply for a longline permit and remanded for consideration of his challenge to the maximum number of longline permits. The court affirmed the denial of eligibility for the pot fishery and upheld CFEC’s refusal to award participation or vessel-investment points.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Chief Justice Fabe; Justice Matthews; Justice Eastaugh; Justice Carpeneti
JURISDICTION	Alaska
DECIDED	December 21, 2007
DOCKET	Nos. S-12451, S-12452
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	May appealed the Commercial Fisheries Entry Commission's final decisions denying his applications for entry permits in the Southern Southeast Inside sablefish longline and pot fisheries. The superior court upheld the Commission's decisions, and May appealed to the Alaska Supreme Court.
STANDARD OF REVIEW	The court directly reviews the merits of an agency decision. Substantial evidence review applies to factual findings; reasonable-basis review applies to legal questions involving agency expertise and to an agency's interpretation of its own regulation; substitution-of-judgment review applies to legal questions outside agency expertise; and the reasonable-and-not-arbitrary standard applies to administrative regulations.
PRECEDENTIAL VALUE	Published, precedential Alaska Supreme Court opinion.

PARTIES

Bert E. May v. State of Alaska, Commercial Fisheries Entry
Commission

TOPICS

judicial review of agency action

administrative law

standard of review

appellate procedure

PRACTICE AREAS

administrative law

commercial fisheries regulation

judicial review of agency action

appellate procedure

QUESTIONS PRESENTED

1. Whether substantial evidence supported CFEC's determination that May was ineligible to apply for an entry permit in the Southern Southeast Inside longline fishery.
2. Whether CFEC properly denied May past-participation points based on extraordinary circumstances.
3. Whether substantial evidence supported CFEC's denial of vessel-investment points.
4. Whether May had an interest sufficient to challenge the maximum number of permits in the longline fishery.
5. Whether substantial evidence supported CFEC's determination that May was ineligible to apply for an entry permit in the pot fishery.
6. Whether May had standing to challenge the maximum number of permits in the pot fishery.

HOLDINGS

1. CFEC erred in determining that May was not eligible to apply for a permit in the longline fishery because its findings that he did not participate in the fishery and did not prove a commercial harvest were not supported by substantial evidence.
2. CFEC properly denied May past-participation points based on extraordinary circumstances.
3. CFEC properly denied May fifteen vessel-investment points.
4. May had an interest sufficient to challenge the maximum number of permits in the longline fishery, even though he was entitled to no points.
5. CFEC properly determined that May was not eligible to apply for a permit in the pot fishery.
6. May lacked standing to challenge the maximum number of permits in the pot fishery because he could not show prejudice.

KEY QUOTATIONS

"We have recognized four principal standards of review for administrative decisions: the "substantial evidence" test applies to questions of fact; the "reasonable basis" test applies to questions of law involving agency expertise; the "substitution of judgment" test applies to questions of law where no expertise is involved; and the "reasonable and not arbitrary" test applies to review of administrative regulations." (175 P.3d at 1215)

“Under these circumstances, this determination is not supported by substantial evidence.” (175 P.3d at 1217)

“Because CFEC based its determination below on its conclusion that May did not have standing to challenge the maximum number, and because we hold that he does have an interest in challenging the maximum number of permits, we remand for further consideration of his argument.” (175 P.3d at 1221)

FACTUAL BACKGROUND

May claimed that he commercially harvested and sold sablefish in 1980 while fishing in the Southern Southeast Inside area, first using pot gear and then changing to longline gear. He submitted affidavits, testimony, and an accounts-receivable ledger supporting his claim that he sold longline-caught sablefish to Annette Island Packing Company, but he could not produce fish tickets. CFEC found that he was not eligible to apply in either fishery, awarded him no participation or vessel-investment points, and concluded that he lacked standing to challenge the fisheries' maximum permit numbers.

PROCEDURAL HISTORY

May applied for entry permits in 1987. After administrative hearings, a hearing officer denied the applications in 2002, and CFEC issued final decisions in January 2004 affirming the denials, rejecting May's points claims, and concluding that he lacked standing to challenge the maximum number of permits. The superior court affirmed CFEC. The Alaska Supreme Court held that May was eligible to apply in the longline fishery and had an interest sufficient to challenge its maximum permit number, remanding that issue, but affirmed the denial of eligibility in the pot fishery.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to CFEC for consideration of May's challenge to the maximum number of permits in the Southern Southeast Inside longline fishery. The court affirmed the superior court's decision upholding CFEC's denial of May's eligibility in the pot fishery and upheld CFEC's points determinations.

CASES CITED

- Cleaver v. State, Commercial Fisheries Entry Commission, 48 P.3d 464, 465, 467-70 (Alaska 2002)
- Handley v. State, Department of Revenue, 838 P.2d 1231, 1233 (Alaska 1992)
- Simpson v. State, Commercial Fisheries Entry Commission, 101 P.3d 605, 608-11 (Alaska 2004)
- Lauth v. State, 12 P.3d 181, 184 (Alaska 2000)
- Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256, 1262-63 (Alaska 1988)
- Younker v. Alaska Commercial Fisheries Entry Commission, 598 P.2d 917, 920-21 (Alaska 1979)