

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0031
)	
VERN JAMISON)	
F/V LISA LYNN)	DECISION
ADF&G # 32264)	
Appellant)	
_____)	December 1, 1999

STATEMENT OF THE CASE

The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on March 29, 1996, which denied Mr. Jamison's application for a vessel moratorium qualification and permit under the Vessel Moratorium Program on Groundfish and Crab based on the landings of the F/V LISA LYNN because he did not own the F/V LISA LYNN when he applied.¹ Mr. Jamison filed a timely appeal with this Office. 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 Mr. Jamison entitled to a vessel moratorium qualification and permit for the F/V LISA LYNN?

BACKGROUND

On January 11, 1996, Mr. Jamison simultaneously filed an application for a vessel moratorium qualification and permit and an application for transfer of a vessel moratorium qualification. The application for the permit and qualification required Mr. Jamison to fill in the name of the "original qualifying vessel," that is, the vessel that made landings of moratorium crab or groundfish between January 1, 1988 and February 9, 1992, and identifying information on the vessel (the ADF&G number,

¹ The Vessel Moratorium Program for Groundfish and Crab, 50 C.F.R. § 679.4(c), which expires on December 31, 1999, should not be confused with the North Pacific License Limitation Program (LLP), 50 C.F.R. § 679.4(k). As of January 1, 2000, a license limitation permit will be necessary to harvest certain species of groundfish in the Gulf of Alaska and Bering Sea and Aleutian Islands (BSAI) areas and Tanner and king crab in BSAI. The application period for LLP is from September 13, 1999 through December 17, 1999. For further information on the License Limitation Program, Mr. Jamison may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2). The NMFS website at "http://www.fakr.noaa.gov" also has information on LLP.

the Coast Guard number, the length of the vessel). It appears that Mr. Jamison initially filled in the F/V GLORIA ANN with its identifying information, crossed that out and filled in the F/V LISA LYNN with its identifying information and then put an "X" through that whole part of the permit application. Mr. Jamison's application for transfer of a moratorium qualification sought to transfer the moratorium qualification of the F/V LISA LYNN to the F/V GLORIA ANN. In both applications, Mr. Jamison claimed he was entitled to a moratorium permit and qualification with an LOA of 32 feet, not 27 feet.

With these applications, Mr. Jamison returned a copy of the summary of the Official Record of the Moratorium Program for the F/V LISA LYNN that RAM had sent him. The Official Record listed Vern Jamison as the owner and showed the F/V LISA LYNN as a qualified vessel entitled to receive a moratorium permit with gear endorsements to harvest groundfish with pot, trawl and hook gear. Mr. Jamison had changed his copy of the Official Record for the F/V LISA LYNN to list instead the F/V GLORIA ANN as the qualifying vessel and changed the LOA of the vessel from 27 feet to 32 feet.

RAM issued an IAD on March 29, 1996, which denied Mr. Jamison's application. First, the IAD stated that, based on the vessel registration records available to RAM, the LOA of the F/V LISA LYNN was 27 feet, not 32 feet. Second, the IAD stated that, based on the records available to RAM, Daniel Thistle was the vessel's current owner. Third, the IAD stated that "[Mr. Jamison's] application for transfer of moratorium qualification could not be processed until the above are resolved."

Mr. Jamison filed a timely appeal with this Office. He sent a survey of the F/V LISA LYNN, dated June 13, 1989, which showed a "registered length" of 27.5 feet, and an assignment of rights by Rainer National Bank to the State of Alaska to a preferred mortgage that Mr. Jamison had taken out on the F/V LISA LYNN in September 1977. Mr. Jamison's letter stated that although the survey showed the registered length of the F/V LISA LYNN as 27.5 feet, he believed the length overall was 30.6 feet. On the question of ownership, he stated:

I was the original owner of the Lisa Lynn. I delivered Pacific cod with this vessel that initially allowed me the moratorium rights. When my father retired from fishing in 94 [1994] I purchased his vessel, a larger safer vessel with more carrying capacity than the Lisa Lynn. I had no prior knowledge that a vessel moratorium program may go into effect, locking me out if I were to sell my original vessel. If I had known I may have hung on to the Lisa Lynn. I feel this decision is unfair to me since I was the original vessel owner and fisherman that landed the fish during the qualifying period.

DISCUSSION

For a vessel to qualify to participate in the Moratorium Program, the vessel must have moratorium qualification. A vessel has moratorium qualification either because it is an original qualifying vessel or

because it has received a moratorium qualification by transfer from an original qualifying vessel.² An original qualifying vessel is a vessel that made landings of moratorium crab or groundfish during the qualifying period, which is January 1, 1988 to February 9, 1992.³

This Decision assumes that Mr. Jamison owned the F/V LISA LYNN from 1977 to 1994, that the F/V LISA LYNN is an original qualifying vessel entitled to a permit to harvest moratorium groundfish with hook, trawl and pot gear, that Mr. Jamison owned the F/V LISA LYNN when it made qualifying landings and that Mr. Jamison owned the F/V GLORIA ANN from 1994 to the present. Mr. Jamison wishes to receive a moratorium permit based on the landings of the F/V LISA LYNN, transfer the moratorium rights of the F/V LISA LYNN to the F/V GLORIA ANN and receive a moratorium permit for the F/V GLORIA ANN. The threshold question is whether Mr. Jamison is entitled to receive the moratorium qualification and permit for the F/V LISA LYNN.

The federal regulations for the Moratorium Program provide that a moratorium permit is to be issued to the owner of the vessel at the time of application.⁴ Both RAM and this Office have concluded that a vessel's moratorium qualification may be severed from the vessel and remain with the prior owner.⁵ But both RAM and this Office have concluded that the regulations require that the vessel moratorium qualification remain with the vessel unless otherwise specified in an agreement or contract.⁶

² 50 C.F.R. § 679.4(c)(7).

³ 50 C.F.R. § 679.2. Moratorium crab are Tanner and king crab harvested in the Bering Sea and Aleutian Islands area (BSAI). *Id.* Moratorium groundfish are species of groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in BSAI. *Id.*

⁴ 50 C.F.R. § 679.4(c)(6), formerly 50 C.F.R. § 676.5(b). See Yukon Queen Fisheries LLP, Appeal No. 96-0009 at 3 n.2 (Sept. 17, 1998); Glen Lockhart, Appeal 96-0015 at 3 n.10 (Nov. 16, 1999).

⁵ In Re Application of Yukon Queen Fisheries, LLP, Appeal No. 96-0009, September 17, 1998.

⁶ RAM used this rule in determining applications under the Moratorium Program. See, e.g., Wallace Botsford, Appeal No. 96-0043 at 2, November 1, 1999; George Eliason, Appeal No. 96-0015 at 2, November 16, 1999. Yukon Queen relied on the preamble to the moratorium regulations which provides in part:

Moratorium qualification is presumed to belong to the current owner of the vessel that made a legal landing of moratorium species from January 1, 1988, through February 9, 1992, unless otherwise specified in a purchase agreement or contract. The moratorium qualification of a vessel may be transferred from the owner of the vessel to another person by mutual agreement. For example, the moratorium qualification of a vessel may be retained by the vessel's owner for liquidation independently of the vessel. A vessel owner also may choose to retain the moratorium qualification of the vessel when it is sold, lost, or destroyed, so that he/she can obtain a moratorium permit for a replacement

Mr. Jamison states that he sold the F/V LISA LYNN in 1994. There is no dispute that he did not own the vessel in 1996, when he applied for a moratorium permit. Mr. Jamison introduces no argument or evidence that he and the buyer of the F/V LISA LYNN agreed to separate the vessel's moratorium rights from the vessel and agreed that Mr. Jamison retained the F/V LISA LYNN's moratorium rights. Thus, the record does not show that Mr. Jamison owned the F/V LISA LYNN or the moratorium rights of the F/V LISA LYNN at the time of application.⁷

Therefore I conclude that Mr. Jamison is not entitled to a moratorium qualification or permit based on the landings of the F/V LISA LYNN. Mr. Jamison does not have any moratorium rights to transfer to the F/V GLORIA ANN.⁸ Since Mr. Jamison is not entitled to a moratorium permit for the F/V LISA LYNN, I do not reach the question of whether the LOA on the moratorium permit for the F/V LISA LYNN should be 32 or 27 feet or some other length.

Mr. Jamison raises the question whether it is fair that the regulations did not provide that he automatically kept the moratorium rights of the F/V LISA LYNN, because his actions while he owned the F/V LISA LYNN created moratorium fishing rights. The regulatory history of the Moratorium Program⁹ does not clearly reveal why the Council structured the Moratorium Program so that moratorium rights were presumed to stay with the vessel, and go to the new owner, but it does reveal

vessel. Regardless of the reason for transferring a moratorium qualification, valid documentation of the transfer is required before the transfer will be approved and a moratorium permit issued based on that moratorium qualification.

60 Fed. Reg. 40,763, 40,766 (1995), *quoted in Yukon Queen Fisheries, LLP*, Appeal No. 96-0009 at 3 n.3. The preamble or background section to the proposed moratorium regulations also support this conclusion. "Moratorium qualification would be a characteristic of the vessel that stays with the vessel, except as described below." 60 Fed. Reg. 25,677, 25,680 (May 12, 1995). "Moratorium qualification would be assumed to remain attached to the vessel that made a legal landing of moratorium species during the qualifying period, unless otherwise specified in a purchase agreement or contract." *Id.* at 25,681.

⁷ Daniel Thistle, the person identified in the IAD as the owner of the F/V LISA LYNN, did not apply for a moratorium qualification and permit based on the landings of the F/V LISA LYNN. That could be due to many reasons. Assuming that Mr. Jamison sold the F/V LISA LYNN to Daniel Thistle, the absence of an application by Mr. Thistle is not, by itself, sufficient to show that Mr. Jamison and Mr. Thistle agreed that Mr. Jamison retained the moratorium rights of the F/V LISA LYNN.

⁸ To effect such a transfer, he would have to submit an application for transfer signed by both the owner of the moratorium rights of the F/V LISA LYNN as the transferor of the rights and himself as the transferee or the person receiving the rights. 50 C.F.R. § 679.4(c)(8)(i)(E). Mr. Jamison makes no argument that the F/V GLORIA ANN is an original qualifying vessel.

⁹ See Notice of Proposed Rule, 59 Fed. Reg. 28,827- 28,838 (June 3, 1994); Notice of Proposed Rule, 60 Fed. Reg. 25,677 - 25,687 (May 12, 1995); Final Rule, 60 Fed. Reg. 40,763 - 40,775 (Aug. 10, 1995).

that the Council made that choice.¹⁰

If the Council structured the Moratorium Program so that moratorium rights were presumed to stay with the person who owned the vessel when it made qualifying landings, and not go to the new owner, some new owners might complain that they had assumed they received a vessel with all of the vessel's fishing rights. The Council had to choose a structure for the Moratorium Program. A structure which assumes that moratorium rights are a characteristic of the vessel is a reasonable choice. Further, any arguments concerning the wisdom or legality of regulations must be addressed to the Council itself or to the courts. A hearing officer must assume the legality of duly promulgated regulations.¹¹

FINDINGS OF FACT

1. Vern Jamison was not the owner of the F/V LISA LYNN when he applied for a moratorium qualification and permit for that vessel.
2. The moratorium rights of the F/V LISA LYNN were not severed from the F/V LISA LYNN.
3. Vern Jamison was not the owner of the moratorium rights of the F/V LISA LYNN when he applied for a moratorium qualification and permit for that vessel.

CONCLUSION OF LAW

Vern Jamison is not entitled to a moratorium qualification and permit for the F/V LISA LYNN.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect January 3, 2000, 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, December 13, 1999.

¹⁰ See *supra* notes 4-6 and accompanying text. The Council adopted a different approach with the License Limitation Program. It appears that, under LLP, the rights flowing from a vessel's fishing history are presumed to stay with the person who owned the vessel on June 17, 1995. If any other person claims a vessel's LLP rights, including the vessel's current owner, it is that other person who has the burden of proving, by the express terms of a written contract, entitlement to the vessel's LLP rights. See 50 C.F.R. § 679.2 (definition of "eligible applicant").

¹¹ Charles J. Petticrew, Appeal No. 95-0008 at 3-4, July 3, 1996; George J. Ramos, Appeal No. 94-0008, Regional Director's Decision on Review at 4, April 21, 1995.

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.

Mary Alice McKeen
Appeals Officer