

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of )  
 ) Appeal No. 99-0002  
ALEUTIAN ENTERPRISE, LTD. )  
F/V ALEUTIAN ENTERPRISE )  
ADF&G # 61634 and ) DECISION  
GOLDEN SABLE FISHERIES, INC. )  
F/V GOLDEN SABLE )  
ADF&G 40918 ) December 2, 1999  
Appellants )  
\_\_\_\_\_)

STATEMENT OF THE CASE

This appeal arises under the Vessel Moratorium Program on Groundfish and Crab.<sup>1</sup> The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on December 30, 1998, which denied an application to transfer vessel Moratorium Qualification No. 6985 from the F/V ALEUTIAN ENTERPRISE to the F/V GOLDEN SABLE and denied Golden Sable Fisheries, Inc.'s application for a moratorium permit. The parties to the proposed transfer filed a joint, 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

Does the F/V ALEUTIAN ENTERPRISE have moratorium qualification?

BACKGROUND

The F/V ALEUTIAN ENTERPRISE was an original qualifying vessel entitled to receive a moratorium

---

<sup>1</sup> 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 the LLP is from September 13, 1999 through December 17, 1999. For further information on LLP, Aleutian Enterprise or Golden Sable Fisheries may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2). NMFS's website at "<http://www.fakr.noaa.gov>" also has information on LLP.

permit with gear endorsements to harvest groundfish with pot, trawl and hook gear. An original qualifying vessel is a vessel that had a landing of moratorium crab or moratorium groundfish species during the qualifying period, which was January 1, 1988 through February 9, 1992.<sup>2</sup> The F/V ALEUTIAN ENTERPRISE sank on March 2, 1990. The owner of the F/V ALEUTIAN ENTERPRISE was Aleutian Enterprise, Ltd.

Aleutian Enterprise, Ltd., transferred the moratorium qualification of the F/V ALEUTIAN ENTERPRISE to the F/V PACIFIC PEARL pursuant to an agreement with Pacific Pearl LLC, the owner of the F/V PACIFIC PEARL. RAM approved the transfer and issued a certificate of moratorium qualification and moratorium permit for the F/V PACIFIC PEARL to Pacific Pearl LLC on April 11, 1996. The certificate of moratorium qualification was for Qualification No. 6985 and it stated: "THIS QUALIFICATION WILL EXPIRE ON 12/31/97."

RAM states that with the certificate, it supplied the following notice:

**SPECIAL NOTICE FROM THE  
RESTRICTED ACCESS MANAGEMENT DIVISION**

**PLEASE NOTE THE DECEMBER 31, 1997 EXPIRATION DATE ON THE ATTACHED CERTIFICATE OF MORATORIUM QUALIFICATION.** This expiration date is the result of the loss or destruction, between 1989 and 1995, of the original qualifying vessel that gave rise to this qualification. In order to extend this qualification to December 31, 1998, the vessel holding the qualification must make a legal landing of a moratorium species between January 1, 1996, and December 31, 1997. The specific regulation governing this issue at 50 CFR at 676.4(c) is provided below for your information and convenience.

*Vessels lost or destroyed from 1989 through 1995. The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, is valid for purposes of issuing a moratorium permit for that vessel, if salvaged, regardless of when salvage began provided that the vessel has not already been replaced and the LOA [length overall] of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of any vessel, that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, may be transferred to another vessel provided the LOA of that vessel does*

---

<sup>2</sup> 50 C.F.R. § 679.2. Moratorium crab are Tanner and king crab harvested in the Bering Sea and Aleutian Islands (BSAI). Moratorium groundfish are groundfish, except sablefish harvested with fixed gear, in the Gulf of Alaska and BSAI. *Id.*

*not exceed the maximum LOA of the original qualifying vessel. The moratorium qualification of such a vessel is not valid for purposes of issuing a moratorium permit for 1998, unless that vessel is used to make a legal landing of a moratorium species from January 1, 1996 through December 31, 1997.*<sup>3]</sup>

Apparently, Pacific Pearl LLC did not live up to its financial obligation under its agreement with Aleutian Enterprise, Ltd. For whatever reason, Pacific Pearl LLC and Aleutian Enterprise, Ltd. filed an application to transfer the Moratorium Qualification No. 6985 back to Aleutian Enterprise, Ltd. RAM approved the transfer and issued a new certificate of moratorium qualification for Qualification No. 6985 to Aleutian Enterprise on April 25, 1996. The new certificate also stated: “THIS QUALIFICATION WILL EXPIRE ON 12/31/97.”

On December 11, 1998, Golden Sable Fisheries, Inc., and Aleutian Enterprise, Ltd., filed an application to transfer Moratorium Qualification No. 6985 from the F/V ALEUTIAN ENTERPRISE to the F/V GOLDEN SABLE. Golden Sable Fisheries, Inc., also filed an application for a vessel moratorium permit. In an IAD issued December 30, 1998, RAM denied both applications. RAM relied the regulation quoted above and concluded that Moratorium Qualification 6985 had expired, presumably because it had received no evidence that landings had been made with a permit that was based on Moratorium Qualification 6985. But, in accord with federal regulation 50 C.F.R. § 679.4(c)(10), RAM issued Golden Sable Fisheries, Inc., an interim permit and a non-transferable certificate of moratorium qualification for the F/V GOLDEN SABLE pending resolution of its claim.

Both parties to the transfer filed a timely appeal with this Office. The appeal stated that, when Pacific Pearl, Ltd., transferred Moratorium Qualification 6985 back to Aleutian Enterprise, Ltd, Aleutian Enterprise, Ltd., had been advised that the F/V PACIFIC PEARL had made a legal landing of moratorium species while operating under Moratorium Qualification 6985. On November 1, 1999, this Office issued an Order informing the parties that it was closing the record as of November 29, 1999 and notifying the Appellants that, by that date, they should submit any additional evidence, in particular any evidence of legal landings by the F/V PACIFIC PEARL in 1996 or 1997.

In response to that order, the parties submitted a letter from counsel which stated: “It is my understanding that the PACIFIC PEARL has been designated by NMFS on a qualification summary as a vessel which made landings during the period in questions [sic]. Accordingly, it is the position of Golden Sable Fisheries, Inc., that it is entitled to a Moratorium Permit and upon expiration of that program to an L.L.P License.”

---

<sup>3</sup> The regulation was renumbered and is now found at 50 C.F.R. 679.4(c)(9)(iii).

## DISCUSSION

At the outset, I wish to emphasize that this is not an appeal concerning any vessel's or any person's rights, or lack of rights, under the North Pacific License Limitation, or LLP, program. If Appellants believe that they have any rights under LLP, they should apply for them. That question will be adjudicated in due course.

Federal regulation 50 C.F.R. § 679.4(c)(9)(iii), quoted above, provides that the moratorium qualification of a vessel which sank between 1989 and 1995 is not valid for issuing a moratorium permit unless that qualification was used by a vessel to make a legal landing of moratorium species between January 1, 1996 and December 31, 1997. RAM's notice on the Certificate for Moratorium Qualification for Qualification No. 6985 was apt: the moratorium qualification expires on December 31, 1997, unless the qualification was at least used once in 1996 or 1997.

Except for a fourteen-day period of April 11 to April 25, 1996, the moratorium qualification for the F/V ALEUTIAN ENTERPRISE was attached to the F/V ALEUTIAN ENTERPRISE. That vessel sank in 1991 and there is no allegation it made any landings in 1996 and 1997. For the period April 11 to April 25, 1996, Pacific Pearl L.L.C. had a moratorium permit for the F/V PACIFIC PEARL, which was based on the moratorium qualification the F/V PACIFIC PEARL had received by transfer from the F/V ALEUTIAN ENTERPRISE.

The parties have introduced insufficient evidence that the F/V PACIFIC PEARL made landings in this time period. The allegation in Mr. Green's letter apparently refers to the qualification summary of the Official Record for the LLP program, which is on the NMFS website. The summary does list the F/V PACIFIC PEARL as a qualified vessel but, by itself, that is insufficient to establish that the F/V PACIFIC PEARL made a legal landing of moratorium species while operating under Moratorium Qualification 6985 between April 11 and April 25, 1996. The F/V PACIFIC PEARL may have qualified for LLP on the basis of other landings during some other time period using some other vessel's moratorium qualification.

Therefore, I conclude that the moratorium qualification of the F/V ALEUTIAN ENTERPRISE expired on December 31, 1997 because it had not been used to make a legal landing of moratorium species between January 1, 1996 and December 31, 1997. Therefore, I conclude that the F/V ALEUTIAN ENTERPRISE does not have moratorium qualification. Aleutian Enterprise, Ltd., cannot therefore transfer a moratorium qualification to the F/V GOLDEN SABLE.

## FINDINGS OF FACT

1. The F/V ALEUTIAN ENTERPRISE sank in 1991.
2. The F/V ALEUTIAN ENTERPRISE was not salvaged.

3. The F/V ALEUTIAN ENTERPRISE was an original qualifying vessel.
4. The moratorium qualification of the F/V ALEUTIAN ENTERPRISE was transferred to the F/V PACIFIC PEARL in 1996.
5. RAM issued a moratorium permit to Pacific Pearl, L.L.C., for the F/V PACIFIC PEARL on April 11, 1996, based on the transfer of the moratorium qualification of the F/V ALEUTIAN ENTERPRISE to the F/V PACIFIC PEARL.
6. RAM approved the transfer of the moratorium qualification from the F/V PACIFIC PEARL back to the F/V ALEUTIAN ENTERPRISE on April 25, 1996.
7. The F/V ALEUTIAN ENTERPRISE did not make any legal landings of moratorium species between January 1, 1996 and December 31, 1997.
8. The F/V PACIFIC PEARL did not make any legal landings of moratorium species between April 11, 1996 and April 25, 1996, when it had a moratorium permit based on the moratorium qualification of the F/V ALEUTIAN ENTERPRISE.

#### CONCLUSIONS OF LAW

1. The moratorium qualification of the F/V ALEUTIAN ENTERPRISE expired on December 31, 1997.
2. The F/V ALEUTIAN ENTERPRISE does not have moratorium qualification.

#### 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. 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