

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 99-0008
	)	
STEVEN MEIER,	)	
F/V AQUILA	)	DECISION
ADF&G # 37295	)	
Appellant	)	
_____	)	December 1, 1999

STATEMENT OF THE CASE

Steven Meier applied for a vessel moratorium qualification and permit under the Vessel Moratorium Program on Groundfish and Crab based on landings made from the F/V AQUILA on April 14, 1999.<sup>1</sup> The Restricted Access Management (RAM) program issued an Initial Administrative Determination (IAD) on April 14, 1999 which denied Mr. Meier a moratorium permit and qualification because he was applying after December 31, 1998 and a moratorium permit based on the moratorium qualification of the F/V AQUILA had not been issued on or before that date. RAM extended Mr. Meier's time to appeal its decision from June 13, 1999 to August 9, 1999. Mr. Meier 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.<sup>2</sup>

ISSUE

Did the moratorium qualification of the F/V AQUILA expire on December 31, 1998?

DISCUSSION

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<sup>1</sup> The Vessel Moratorium Program for Groundfish and Crab, 50 C.F.R. § 679.4(c), expires on December 31, 1999. This program 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 areas and certain species of crab in the Bering Sea and Aleutian Islands area. The application period for the LLP is from September 13, 1999 through December 17, 1999. For further information on the License Limitation Program, Mr. Meier 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.

<sup>2</sup> 50 C.F.R. § 679.43.

After extensive public comment and debate,<sup>3</sup> the North Pacific Fisheries Management Council put the Moratorium Program into place on September 11, 1995.<sup>4</sup> The Moratorium Program was a temporary measure to freeze the number of vessels in the moratorium fisheries while the Council developed a more comprehensive plan to rationalize the moratorium fisheries and prevent overfishing and overcapitalization in them.<sup>5</sup> The regulations for the Moratorium Program provided that, to participate in the moratorium fisheries from January 1, 1996 to December 31, 1998, a vessel had to have a moratorium permit.<sup>6</sup> The Council assumed that, by that date, the more permanent program to limit participation in the moratorium fisheries would be in effect.

But the new program -- by now named the North Pacific Fisheries Licence Limitation Program or LLP -- was not in place by December 31, 1998. The Council did not wish to leave the moratorium fisheries totally unregulated and therefore, in January 1999, extended or reenacted the Moratorium Program through December 31, 1999.<sup>7</sup> The Council left most of the provisions of the Moratorium Program unchanged. One change the Council did make was to add a provision that provided for the expiration of the moratorium qualification of certain vessels. That new section, 50 C.F.R. § 679.4(c)(7)(iii), states:

*Expiration of moratorium qualification.* A vessel's moratorium qualification will expire on December 31, 1998, unless a moratorium permit has been applied for on or before December 31, 1998, and subsequently issued based on that moratorium qualification.

Under the Moratorium Program as originally adopted, there was no deadline for applying for a moratorium permit. If a vessel had moratorium qualification, either by its own landings or by transfer from another vessel, it could apply at any time for a moratorium permit. A vessel had moratorium qualification by its own landings if it made landings of moratorium species during the qualifying period.

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<sup>3</sup> 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).

<sup>4</sup> Final Rule, 60 Fed. Reg. 40763, 40771 (Aug. 10, 1995).

<sup>5</sup> 60 Fed. Reg. at 25,677.

<sup>6</sup> 50 C.F.R. § 676.3, renumbered as 50 C.F.R. § 679.4(c)(1). The renumbering was part of the consolidation of NMFS regulations, 61 Fed. Reg. 31,228 - 31,302 (June 19, 1996), and was not intended to make any substantive changes in the regulations, *id.* at 31,229.

<sup>7</sup> Final Rule, 64 Fed. Reg. 3651-3653 (Jan. 25, 1999). The proposed rule is found at 63 Fed. Reg. 63,442-63,444 (November 13, 1998).

which was January 1, 1988 through February 9, 1992.<sup>8</sup> That vessel was called an original qualifying vessel. The new regulation, in effect, imposed an application deadline of December 31, 1998. If some one had not used the moratorium qualification of an original qualifying vessel to obtain a moratorium permit by December 31, 1998, that qualification expired.<sup>9</sup>

It is true that the Official Record for the Moratorium Program shows the F/V AQUILA as an original qualifying vessel entitled to harvest moratorium groundfish with hook, trawl and pot gear. This means that a moratorium permit would have been issued, based on the moratorium qualification of the F/V AQUILA, if an application had been filed on or before December 31, 1998. But Mr. Meier applied on April 14, 1999. And the record contains no assertion or evidence that anyone besides Mr. Meier applied for a moratorium permit based on the moratorium qualification of the F/V AQUILA on or before December 31, 1998. I therefore conclude that the moratorium qualification of the F/V AQUILA expired on December 31, 1998.

I wish to note that at the same time RAM correctly denied Mr. Meier a final moratorium permit, it issued him an interim moratorium permit. RAM's action was based on 50 C.F.R. § 679.4(c)(10) which was also readopted by the Council as part of its extension of the Moratorium Program. This regulation requires that, if RAM denies an applicant a final moratorium permit, it must issue the applicant an interim moratorium permit which is valid pending final agency action on the application.<sup>10</sup> Therefore, Mr. Meier was able to participate in the moratorium groundfish fisheries for the 1999 season on an interim permit.

#### FINDINGS OF FACT

1. Mr. Meier filed an application for a moratorium permit and qualification after December 31, 1998, which was based on landings of the F/V AQUILA.
2. No one had applied for a moratorium permit based on the moratorium qualification of the F/V

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<sup>8</sup> 50 C.F.R. § 679.2. Moratorium species are either moratorium crab or moratorium groundfish. Moratorium crab are Tanner or king crab harvested in the Bering Sea and Aleutian Islands area (BSAI). *Id.* Moratorium groundfish are groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or BSAI. *Id.*

<sup>9</sup> Many persons who could have applied for moratorium permits between January 1, 1996 and December 31, 1998 did not. If all those persons applied in 1999, the Council was concerned it would adversely affect the moratorium fisheries. The purpose of the new requirement was thus "to eliminate the potential for latent capacity entering the affected fisheries through a restriction on the submission of new moratorium permit applications during the extension." 64 Fed. Reg. at 3651.

<sup>10</sup> Order, Richard Newby, Appeal No. 99-0001, Feb. 26, 1999.

AQUILA on or before December 31, 1998.

#### CONCLUSIONS OF LAW

The moratorium qualification of the F/V AQUILA expired on December 31, 1998.

#### DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect December XX, 1999, 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 XX, 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.

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Mary Alice McKeen  
Appeals Officer