

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

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| In re Application of |) | Appeal No. 96-0016 |
| |) | |
| JOHN CESSNUN, |) | |
| F/V DAYBREAK |) | DECISION |
| ADF&G # 52962 |) | |
| Appellant |) | |
| _____ |) | November 30, 1999 |

STATEMENT OF THE CASE

On January 8, 1996, John Cessnun filed an application for a Vessel Moratorium Qualification and Permit. Mr. Cessnun claimed in his application that the length overall (LOA) of his "original qualifying vessel," the F/V DAYBREAK, was 39 feet. In an Initial Administrative Determination (IAD) issued on February 23, 1996, the Restricted Access Management (RAM) Program¹ approved Mr. Cessnun's application, but determined that the LOA of the vessel was only 36 feet, as of June 24, 1992. In response to the IAD, Mr. Cessnun submitted a letter to RAM, stating that RAM's claimed 36 feet for the vessel represented "keel length," and that it was the equivalent to an LOA of 39 feet. RAM determined that the letter was insufficient evidence of the vessel's LOA. Mr. Cessnun did not provide further documentation of his claim. RAM issued an interim Vessel Moratorium Permit for the F/V DAYBREAK at an LOA of 39 feet, pending a request for reconsideration or an appeal by Mr. Cessnun.

On August 30, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM referred this case to this Office for filing as an appeal. 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 the F/V DAYBREAK entitled to a Vessel Moratorium Permit for with an LOA of 39 feet?

PRINCIPLES OF LAW

To obtain a Vessel Moratorium Permit for an "original qualifying vessel" under the Vessel Moratorium Program, an applicant is required (if requested by RAM) to produce reliable documentation of a

¹The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 10 Sep 97].

vessel's "original qualifying LOA," dated before June 24, 1992, such as a vessel survey, builder's plan, a state or Federal registration certificate, fishing permit records, etc. 50 C.F.R. § 679.4(c)(6). A vessel's "original qualifying LOA" is the "LOA of the original moratorium qualifying vessel on June 24, 1992." 50 C.F.R. § 679.2. The "LOA" of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments." 50 C.F.R. § 679.2. An "original qualifying vessel" means a vessel that made a legal landing during the moratorium qualifying period. 50 C.F.R. § 679.2.

DISCUSSION

The claim made by Mr. Cessnun in his letter to RAM is the only evidence in the record that shows the F/V DAYBREAK was 39 feet as of June 24, 1992. Mr. Cessnun's assertion of his claim is not "reliable documentation," and it is not, by itself, sufficient evidence to overcome the presumption of the information in RAM's records, which shows the vessel's LOA at 36 feet.

Consequently, I find the greater weight of the evidence shows that the LOA of the F/V DAYBREAK was 36 feet, as of June 24, 1992. In light of this, I conclude that the vessel is not entitled to a Vessel Moratorium Permit with an LOA of 39 feet.

FINDING OF FACT

The LOA of the F/V DAYBREAK was 36 feet as of June 24, 1992.

CONCLUSION OF LAW

The F/V DAYBREAK is not entitled to a Vessel Moratorium Permit with an LOA of 39 feet.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. As a result, the interim Vessel Moratorium Permit that was issued for the F/V DAY BREAK expires upon the effective date of this Decision. This Decision takes effect on December 30, 1999, unless by that date the Regional Administrator orders the 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 December 10, 1999, the tenth day after the date of this Decision. 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. A timely Motion

for Reconsideration will result in a stay of the effective date of the decision, pending a ruling on the motion or the issuance of a Decision on Reconsideration.

Randall J. Moen
Appeals Officer