

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0017
)	
SCHOONER SEAFOODS, Inc.)	
F/V ALEUTIAN)	DECISION ON RECONSIDERATION
ADF&G # 07148)	
Appellant)	
_____)	November 16, 1999

STATEMENT OF THE CASE

On November 10, 1999, the Appellant filed a timely Motion for Reconsideration of the Decision issued in this case. The Decision concluded that the F/V ALEUTIAN is not entitled to a Vessel Moratorium Permit with a length overall (LOA) of 68 feet. We determined that the Appellant's evidence [a March 8, 1996, Federal Fisheries Permit for the F/V ALEUTIAN] is insufficient to overcome the presumption of the evidence in RAM's records, which shows the vessel's LOA was 63 feet as of June 24, 1992.

As part of its Motion for Reconsideration, the Appellant has submitted a marine survey for the F/V ALEUTIAN, dated February 13, 1989, which shows an LOA of 68 feet. This was the first time the marine survey was submitted as evidence in this case. The standard of review for a Motion for Reconsideration is whether the Appeals Officer overlooked or misunderstood material facts or law on appeal. We did not overlook the marine survey when we wrote the Decision because the marine survey was not in the record on appeal. However, as this appeal was forwarded to us by RAM for filing, rather than submitted directly by the Appellant, it may be that the Appellant did not understand that he could submit additional evidence during the appeal. Because of this possible misunderstanding, and because the marine survey evidence does not raise a new issue in this case, I conclude that the marine survey is not barred from reconsideration of the evidence.

ISSUE

Is the marine survey, which shows an LOA of 68 feet as of February 13, 1989, sufficient evidence of the LOA of the F/V ALEUTIAN, as of June 24, 1992, when RAM's records show an LOA of 63 feet?

PRINCIPLES OF LAW

To obtain a Vessel Moratorium Permit under the Vessel Moratorium Program, an applicant is required to produce reliable documentation of a 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.

DISCUSSION

The marine survey submitted on reconsideration, and the Federal Fisheries Permit submitted on to RAM, show an LOA of 68 feet for the F/V ALEUTIAN between 1989 and 1996. RAM's records show an LOA of 63 feet for the vessel as of June 24, 1992, but the LOA is based on self-reported vessel registration information, and is not as reliable as the LOA recorded on a marine survey. Therefore, given that the marine survey is by law "reliable documentation" of the LOA of the F/V ALEUTIAN, that the vessel's LOA was recorded on the marine survey and the Federal Fisheries Permit as the same length between 1989 and 1996, that RAM's records are based on self-reported information, and that there are no other documents in the record indicating that the vessel was shortened by reconstruction during that period of time, and, I find it more likely than not that the LOA of the F/V ALEUTIAN was 68 feet as of June 24, 1992.

FINDING OF FACT

The LOA of the F/V ALEUTIAN was 68 feet on June 24, 1992.

CONCLUSION OF LAW

The F/V ALEUTIAN is eligible for a Vessel Moratorium with an LOA of 68 feet.

DISPOSITION AND ORDER

The IAD and the Reconsideration of the IAD that are the subject of this appeal, as well as the Decision in this Appeal, are vacated. RAM is ORDERED to amend the Official Record to show that the LOA of the F/V ALEUTIAN was 68 feet as of June 24, 1992. This Decision on Reconsideration takes effect December 15, 1999, unless by that date the Regional Administrator orders the review of the Decision on Reconsideration.

Randall J. Moen
Appeals Officer