

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 96-0017  
)  
SCHOONER SEAFOODS, Inc., ) DECISION  
Appellant )  
\_\_\_\_\_ ) November 1, 1999

STATEMENT OF THE CASE

On February 28, 1996, Schooner Seafoods, Inc. [SSI] filed an application for a Vessel Moratorium Permit. SSI claimed in its application that the length overall (LOA) of its original qualifying vessel, the F/V ALEUTIAN, was 68 feet. In an Initial Administrative Determination (IAD) issued on March 1, 1996, the Restricted Access Management (RAM) Program<sup>1</sup> approved SSI's application, but determined that the LOA of the vessel was only 63 feet, as of June 24, 1992. In response to the IAD, SSI submitted a copy of its Federal Fisheries Permit for the F/V ALEUTIAN, which showed the vessel's length at 68 feet. The permit was issued March 8, 1996. RAM determined that the permit was insufficient evidence of the vessel's LOA, as of June 24, 1992. SSI did not provide further documentation of its claim.

On June 6, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM referred this case to this Office for filing as an appeal. RAM issued an interim Vessel Moratorium Permit for the F/V ALEUTIAN at an LOA of 68 feet, pending the appeal of SSI's case. 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 Schooner Seafoods, Inc. entitled to a Vessel Moratorium Permit for the F/V ALEUTIAN with an LOA of 68 feet?

PRINCIPLES OF LAW

To obtain a Vessel Moratorium Permit under the Vessel Moratorium Program, an applicant is required (if requested by RAM) 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"

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

is the "LOA of the original moratorium qualifying vessel on June 24, 1992." 50 C.F.R. § 679.2.

#### DISCUSSION

RAM's Official Moratorium Record bases its vessel lengths on state vessel registration files for 1992, or the most recent year to 1992 that was available to the North Pacific Fishery Management Council staff. [Exhibit 1, Darrell Brannan e-mail memo, 20 Oct 95] The Federal Fisheries Permit produced by SSI for the F/V ALEUTIAN is the only evidence in the record that shows the vessel was 68 feet. The permit was issued nearly four years after June 24, 1992. Given its date, the permit is not by itself strong enough evidence to overcome the presumption of the information in RAM's records, which shows the vessel's LOA at 63 feet, as of June 24, 1992. Therefore, the greater weight of the evidence shows that the LOA of the F/V ALEUTIAN was 63 feet, as of that date. I conclude that SSI is not entitled to a Vessel Moratorium Permit with an LOA of 68 feet.

#### FINDING OF FACT

The LOA of the F/V ALEUTIAN was 63 feet as of June 24, 1992.

#### CONCLUSION OF LAW

Schooner Seafoods, Inc. is not entitled to a Vessel Moratorium Permit for the F/V ALEUTIAN with an LOA of 68 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 ALEUTIAN expires upon the effective date of this Decision. This Decision takes effect on December 1, 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., on November 12, 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.

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Randall J. Moen  
Appeals Officer