

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0014
)	
VOLNEY SMITH,)	
F/V PAT)	DECISION
ADF&G # 01212)	
Appellant)	
_____)	November 30, 1999

STATEMENT OF THE CASE

On December 21, 1999, Volney Smith filed an application for a Vessel Moratorium Qualification and Permit. Mr. Smith claimed in his application that the length overall (LOA) of his "original qualifying vessel," the F/V PAT, was 45 feet. In an Initial Administrative Determination (IAD) issued on February 23, 1996, the Restricted Access Management (RAM) Program¹ approved Mr. Smith's application, but determined that the LOA of the vessel was only 40 feet, as of June 24, 1992.

In response to the IAD, Mr. Smith submitted two U.S. Coast Guard documents, which shows the registered length of the F/V PAT at 40 feet. Mr. Smith claimed that the "40 feet" represents "keel length," and that the "vessel's LOA" is 45 feet. On June 6, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD, after determining that Mr. Smith's evidence was insufficient evidence of the LOA of the vessel. RAM issued an interim Vessel Moratorium Permit for the F/V PAT at an LOA of 45 feet, pending a request for reconsideration or an appeal by Mr. Smith. 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 PAT entitled to a Vessel Moratorium Permit with an LOA of 45 feet?

PRINCIPLES OF LAW

To obtain a Vessel Moratorium Permit for an "original qualifying vessel" under the Vessel Moratorium

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

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" 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

After Mr. Smith filed this appeal, the National Marine Fisheries Service (NMFS) measured the F/V PAT to determine its LOA. NMFS determined that the LOA of the vessel was "45' 1/2," and that there were "no physical signs of the vessel having been lengthened."²

The letter submitted by NMFS to this Office of the vessel's LOA is "reliable documentation" of the LOA of the F/V PAT, and the evidence in the letter is sufficient to overcome the presumption of the information in RAM's records, which shows the vessel's LOA at 40 feet, as of June 24, 1992. After rounding the length measured by NMFS to the nearest foot, I find that the LOA of the F/V PAT was 46 feet, as of June 24, 1992. In light of this, I conclude that the vessel is entitled to a Vessel Moratorium Permit with an LOA of 46 feet.

FINDING OF FACT

The LOA of the F/V PAT was 46 feet as of June 24, 1992.

CONCLUSION OF LAW

The F/V PAT is entitled to a Vessel Moratorium Permit with an LOA of 46 feet.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is VACATED. This Decision takes effect on December 30, 1999, unless by that date the Regional Administrator orders the review of the decision.

²See, the letter from Mr. Steven J. Niemi, Special Agent, NMFS, dated June 18, 1999.

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