

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 96-0032
	)	
JOHN C. WEYHMILLER,	)	
F/V MARY CARL	)	DECISION
ADF&G # 27168	)	
Appellant	)	
_____	)	December 1, 1999

STATEMENT OF THE CASE

On January 25, 1996, John Weyhmiller filed an application for a Vessel Moratorium Qualification and Permit. Mr. Weyhmiller claimed in his application that the length overall (LOA)<sup>1</sup> of his “original qualifying vessel,” the F/V MARY CARL, was 46 feet. In an Initial Administrative Determination (IAD) issued on February 23, 1996, the Restricted Access Management (RAM) Program<sup>2</sup> approved Mr. Weyhmiller’s application, but determined that the LOA of the vessel was only 39 feet, as of June 24, 1992.

In response to the IAD, Mr. Weyhmiller submitted a copy of a U.S. Coast Guard Certificate of Documentation, dated May 22, 1987, which shows the registered length of the vessel at 40.7 feet. RAM determined that the certificate was insufficient evidence of the vessel’s LOA, as of June 24, 1992. Mr. Weyhmiller did not provide further documentation of his claim. RAM issued an interim Vessel Moratorium Permit for the F/V MARY CARL at a mistaken LOA of 39 feet, pending the appeal of Mr. Weyhmiller’s case. The LOA for the interim Vessel Moratorium Permit should have been issued for 46 feet, the LOA claimed by Mr. Weyhmiller in his application. 50 C.F.R. § 679.4(c)(10).

On June 7, 1996, RAM issued an IAD on Reconsideration that affirmed the IAD. RAM referred this case to this Office for filing as an appeal. On appeal, Mr. Weyhmiller produced a letter from the harbor master of Craig, Alaska, dated February 21, 1997, stating that the F/V MARY CARL has been moored in the Craig harbor the last five years, and that Mr. Weyhmiller pays moorage to the city, based on the “vessel’s length of 46’.”

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<sup>1</sup>The “LOA” of a vessel is 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.

<sup>2</sup>The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 10 Sep 97].

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 MARY CARL entitled to a Vessel Moratorium Permit with an LOA of 46 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 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. 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 Coast Guard’s Certificate of Documentation, coupled with the harbor master’s letter, is reliable documentation of the LOA of the F/V MARY CARL on June 24, 1992; and in this case, is sufficient to overcome the presumption of the length of the vessel in RAM’s records.

The Coast Guard’s Certificate of Documentation and the harbor master’s letter show that the vessel’s LOA was approximately 46 feet between 1987 and 1997. It is quite likely that the documented length of 40 feet in the Certificate of Documentation in fact approximates an actual LOA of 46 feet; and it is unlikely that Mr. Weyhmilller would have been willing to pay moorage fees for a vessel of 40 feet, for five years between 1992 and 1997, based on a vessel of 46 feet. The only evidence showing a different LOA for the vessel, is the information in RAM’s records, which is based on self-reported vessel information from the State of Alaska Department of Fish & Game.

In light of all of this, I find the greater weight of the evidence shows that the LOA of the F/V MARY CARL was 46 feet, as of June 24, 1992. I conclude that the F/V MARY CARL is entitled to a Vessel Moratorium Permit with an LOA of 46 feet.

## FINDING OF FACT

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

## CONCLUSION OF LAW

The F/V MARY CARL 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 31, 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 13, 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