

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0073
)
TRIDENT SEAFOODS CORP.,) DECISION
Appellant)
_____) October 25, 1999

STATEMENT OF THE CASE

On December 12, 1995, Trident Seafoods Corporation (TSC) filed an application for a Vessel Moratorium Permit. TSC claimed in its application that the length overall (LOA) of its original qualifying vessel, the F/V FAR WEST LEADER, was 110 feet. In an Initial Administrative Determination (IAD) issued on March 28, 1996, the Restricted Access Management (RAM) Program¹ approved TSC's application, but determined that the LOA of the vessel was only 90 feet, as of June 24, 1992. TSC presented evidence to show that the vessel's LOA was 110 feet, but RAM deemed the evidence insufficient in an IAD on Reconsideration issued August 9, 1996. RAM referred this case to this Office for filing as an appeal. In the meantime, Trident Seafoods Corporation has been issued an interim Vessel Moratorium Permit for the F/V FAR WEST LEADER at an LOA of 110 feet.

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 Trident Seafoods Corporation entitled to a Vessel Moratorium Permit for the F/V FAR WEST LEADER with an LOA of 110 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" is the "LOA of the original moratorium qualifying vessel on June 24, 1992." 50 C.F.R. § 679.2.

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

DISCUSSION

When TSC applied for a Vessel Moratorium Permit, it claimed that the LOA of its qualifying vessel, the F/V FAR WEST LEADER, was 110 feet. Because its records showed the vessel's LOA was 90 feet, as of June 24, 1992, RAM informed TSC (in an IAD dated March 28, 1996) that it needed to submit reliable documentation to RAM to support its claim of 110 feet. TSC submitted the following evidence for the record: (1) a U.S. Coast Guard Certificate of Documentation for the FAR WEST LEADER, which shows the vessel's LOA at 100.6 feet as of November 9, 1993; (2) a marine survey report for the F/V FAR WEST LEADER, dated November 8, 1990, which shows the vessel's LOA at 90 feet; and (3) a stability report for the F/V FAR WEST LEADER, dated November 17, 1993, which shows the vessel's LOA at 107.7 feet and that the vessel was "lengthened and repowered" in 1993.

The only evidence in the record showing an LOA greater than 90 feet for the F/V FAR WEST LEADER is a stability report for the vessel, dated November 17, 1993, and a U.S Coast Guard Certificate of Documentation for the vessel, dated November 9, 1993. Given that this evidence is dated *after* June 24, 1992, and that the stability report shows that the vessel was reconstructed in 1993, I find that the greater weight of the evidence shows that the LOA of the FAR WEST LEADER was 90 feet, as of June 24, 1992. RAM's records, which are based on self-reported Alaska Department of Fish and Game (ADF&G) vessel information records, and the marine survey for the F/V FAR WEST LEADER, show that the vessel was 90 feet on or before that date. In light of this, I conclude that Trident Seafoods Corporation is not entitled to a Vessel Moratorium Permit for the F/V FAR WEST LEADER with an LOA of 110 feet.

FINDINGS OF FACT

1. RAM requested TSC to submit reliable documentation to RAM in support of its claim that the LOA of the F/V FAR WEST LEADER was 110 feet, as of June 24, 1992.
2. The only evidence in the record showing an LOA greater than 90 feet for the F/V FAR WEST LEADER is a stability report for the vessel, dated November 17, 1993, and a U.S Coast Guard Certificate of Documentation for the vessel, dated November 9, 1993.
3. The F/V FAR WEST LEADER was "lengthened and repowered" in 1993.
4. RAM's records, which are based on self-reported ADF&G vessel information records, and the marine survey for the F/V FAR WEST LEADER, show that the vessel was 90 feet on or before June 24, 1992.
5. The LOA of the F/V FAR WEST LEADER was 90 feet, as of June 24, 1992.

CONCLUSIONS OF LAW

1. TSC did not submit reliable documentation of its claim that the F/V FAR WEST LEADER was 110 feet on or before June 24, 1992.
2. TSC is not entitled to a Vessel Moratorium Permit for the FAR WEST LEADER with an LOA of 110 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 FAR WEST LEADER expires upon the effective date of this Decision. This Decision takes effect on November 24, 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 4, 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