

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0077
)
MEREK MURA,) DECISION
Appellant)
_____) October 25, 1999

STATEMENT OF THE CASE

On January 31, 1996, Merek Mura filed an application for a Vessel Moratorium Permit. Mr. Mura claimed in his application that the length overall (LOA) of his original qualifying vessel, the F/V BOBOLINK, was 48 feet. In an Initial Administrative Determination (IAD) issued on February 23, 1996, the Restricted Access Management (RAM) Program¹ approved Mr. Mura's application, but determined that the LOA of the vessel was only 42 feet, as of June 24, 1992. RAM requested that Mr. Mura to produce documentation to support his claim, but he did not do so. On August 30, 1996, RAM issued an IAD on Reconsideration, which reaffirmed the IAD. RAM referred this case to this Office for filing as an appeal. In the meantime, Mr. Mura has been issued an interim Vessel Moratorium Permit for the F/V BOBOLINK at an LOA of 48 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 Mr. Mura entitled to a Vessel Moratorium Permit for the F/V BOBOLINK with an LOA of 48 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 Mr. Mura applied for a Vessel Moratorium Permit, he claimed that the LOA of his qualifying vessel, the F/V BOBOLINK, was 48 feet. Because its records showed that the vessel's LOA was 42 feet, as of June 24, 1992, RAM informed Mr. Mura (in an IAD dated February 23, 1996) that he needed to submit reliable documentation of his claim of 48 feet to RAM. In a letter to RAM, dated March 6, 1997, Mr. Mura restated his claim, and stated that he would send fish tickets and vessel documents to RAM by June 1996. Mr. Mura, however, failed to do so.

The claim made by Mr. Mura in his letter to RAM is the only evidence in the record that shows the F/V BOBOLINK was 48 feet on or before June 24, 1992. Mr. Mura's assertion of his claim is not "reliable documentation," and it 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 42 feet. Consequently, the greater weight of the evidence shows that the LOA of the F/V BOBOLINK was 42 feet, as of June 24, 1992. In light of this, I conclude that Mr. Mura is not entitled to a Vessel Moratorium Permit with an LOA of 48 feet.

FINDINGS OF FACT

1. RAM requested Mr. Mura to submit reliable documentation to RAM to support his claim that the LOA of the F/V BOBOLINK was 48 feet, as of June 24, 1992.
2. Mr. Mura's letter to RAM is the only evidence in the record showing an LOA greater than 42 feet for the F/V BOBOLINK.
3. RAM's records (which are based on self-reported ADF&G vessel information records) show that the F/V BOBOLINK was 42 feet, as of June 24, 1992.
4. The LOA of the F/V BOBOLINK was 42 feet, as of June 24, 1992.

CONCLUSIONS OF LAW

1. Mr. Mura's assertion in his letter to RAM is not "reliable documentation" of his claim, and it 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 42 feet.
2. Mr. Mura is not entitled to a Vessel Moratorium Permit for the F/V BOBOLINK with an LOA of 48 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 BOBOLINK 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