

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0071
)	
ESTATE of ROBERT E. NEWMAN)	
F/V MORZHOVOI)	DECISION
ADF&G #07090)	
Appellant)	
<hr/>		November 19, 1999

STATEMENT OF THE CASE

On January 8, 1996, Robert E. Newman filed an application for a Vessel Moratorium Qualification and Permit for the vessel MORZHOVOI, ADF&G No. 07090, USCG. No. 523428. Mr. Newman died January 19, 1998. On his 1996 application, over signature dated January 2, 1996, Mr. Newman claimed that the length overall (LOA) of the MORZHOVOI was changed from 91 feet to 100 feet in 1994. He specifically stated that the stern of the vessel was lengthened 9 feet in May 1994. Mr. Newman also claimed that the MORZHOVOI harvested moratorium crab and moratorium groundfish with hook and pot gear between January 1, 1988, and February 9, 1992, and between February 10, 1992, and December 11, 1994.

In an Initial Administrative Determination (IAD) issued on March 18, 1996, the Restricted Access Management (RAM) Program¹ approved Mr. Newman's application to fish crab and groundfish with pot gear, but determined that the LOA of the MORZHOVOI was only 86 feet, as of June 24, 1992, and that the vessel did not harvest moratorium groundfish with hook gear during the moratorium qualifying periods of January 1, 1988, through February 9, 1992, and February 10, 1992, through December 11, 1994. RAM issued Mr. Newman an interim Vessel Moratorium Permit for the MORZHOVOI at an LOA of 100 feet, to fish groundfish and crab with pot and hook gear, pending the outcome of a request for reconsideration or an appeal by Mr. Newman.

In response to the IAD, Mr. Newman submitted expense receipts, a marine survey dated April 22, 1996, and pictures, to show that the MORZHOVOI was 100 feet in 1994 and 1996; and two state of Alaska fish tickets for Pacific halibut and Pacific cod landings made from the vessel in 1991.

On June 7, 1996, RAM issued an IAD on Reconsideration that affirmed the earlier IAD. In the IAD on Reconsideration, RAM noted that the handwritten inscription on one of the two copies of fish tickets submitted by Mr. Newman, which showed that the vessel landed Pacific cod in 1991, was not on the original fish ticket. State of Alaska fish ticket records for the MORZHOVOI do

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

not show that Pacific cod landings were made from the vessel in 1991.

RAM referred this case to this Office for filing as an appeal. On appeal, Mr. Newman submitted (1) a marine survey for the MORZHOVOI,² dated November 10, 1989, which shows an LOA of 90 feet for the vessel; and (2) a builder's sketch of a crab vessel entitled, "90 Foot International Challenger," showing a date August 2, 1969, the year the MORZHOVOI was built.

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.

ISSUES

1. Is the MORZHOVOI entitled to a Vessel Moratorium Qualification and Permit with an LOA of 100 feet?
2. Is the MORZHOVOI entitled to a Vessel Moratorium Qualification and Permit as an "original qualifying vessel" to fish moratorium groundfish with hook gear?

PRINCIPLES OF LAW

1. 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).
2. 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.
3. 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, ..."
4. To obtain a Vessel Moratorium Permit to fish moratorium groundfish with hook gear under the Vessel Moratorium Program, as an "original qualifying vessel." the vessel must have made at least one legal landing of moratorium groundfish between January 1, 1988, and February 9, 1992; or at least one legal landing of moratorium crab between January 1, 1988, and February 9, 1992, combined with at least one legal landing of moratorium groundfish with hook gear between February 10, 1992, and December 11, 1994. 50 C.F.R. § 679.4(c)(5)(iv).

²See, the "Condition And Valuation Survey," November 10, 1989, by Ronald Baptista, marine surveyor, BBG Corporation.

5. “Moratorium groundfish” does not include Pacific halibut (or sablefish harvested with fixed gear). 50 C.F.R. § 679.2.

DISCUSSION

1. Is the F/V MORZHOVOI entitled to a Vessel Moratorium Qualification and Permit with an LOA of 100 feet?

The marine surveys show that the LOA of the MORZHOVOI was 90 feet in 1989 and 100 feet in 1996. The only evidence showing the vessel’s LOA as of June 24, 1992, are RAM’s records, which show an LOA of 86 feet as of that date. RAM’s records for the LOA of a vessel are based on self-reported vessel registration information, and are not as reliable as the LOA recorded on a marine survey. Given that the marine surveys are by law “reliable documentation” of the LOA of the MORZHOVOI, that RAM’s records are based on self-reported vessel information, that the marine surveys for the vessel show an LOA was between 90 feet and 100 feet between 1989 and 1996, and that there is no evidence that the vessel’s LOA was shortened 4 feet between 1989 and June 24, 1992, I find it more likely than not that the LOA of the MORZHOVOI was 90 feet as of June 24, 1992. I conclude that the MORZHOVOI is not entitled to a Vessel Moratorium Qualification and Permit with an LOA of 100 feet. The vessel is entitled to a Vessel Qualification and Moratorium Permit with an LOA of 90 feet.

2. Is the F/V MORZHOVOI entitled to a Vessel Moratorium Qualification and Permit “as an original qualifying vessel” to fish moratorium groundfish with hook gear?

Neither RAM’s records, nor Mr. Newman’s evidence, show that landings of moratorium groundfish were made from the MORZHOVOI during the moratorium qualifying period. The landing on the one fish ticket produced by Mr. Newman for Pacific Cod does not appear on the original fish ticket. And while Mr. Newman did produce state fish tickets for halibut landings, halibut is not considered “groundfish” for purposes of the Vessel Moratorium Program.

Thus, due to the absence of reliable documentation, I find that the MORZHOVOI did not land moratorium groundfish between January 1, 1988, and February 9, 1992, or land moratorium groundfish from harvests made with hook gear between February 10, 1992, and December 11, 1994. Therefore, I conclude that the MORZHOVOI is not entitled to a Vessel Moratorium Permit as an “original qualifying vessel to fish moratorium groundfish with hook gear.

FINDINGS OF FACT

1. The LOA of the MORZHOVOI was 90 feet as of June 24, 1992.
2. The MORZHOVOI did not land moratorium groundfish between January 1, 1988, and February 9, 1992 or land moratorium groundfish from harvests made with hook gear between February 10, 1992, and December 11, 1994.

CONCLUSIONS OF LAW

1. The MORZHOVOI is not entitled to a Vessel Moratorium Qualification and Permit with an LOA of 100 feet.
2. The MORZHOVOI is entitled to a Vessel Moratorium Qualification and Permit with an LOA of 90 feet.
3. The MORZHOVOI is not entitled to a Vessel Moratorium Qualification and Permit as an “original qualifying vessel” to fish moratorium groundfish with hook gear.

DISPOSITION AND ORDER

The IAD on Reconsideration that is the subject of this appeal is VACATED. RAM is ORDERED to issue a Vessel Moratorium Qualification and Permit for the vessel MORZHOVOI with an LOA of 90 feet. The portion of the IAD on Reconsideration that pertains to eligibility of the MORZHOVOI to fish moratorium groundfish is AFFIRMED. This Decision takes effect December 20, 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 November 29, 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