

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF THE REGIONAL DIRECTOR

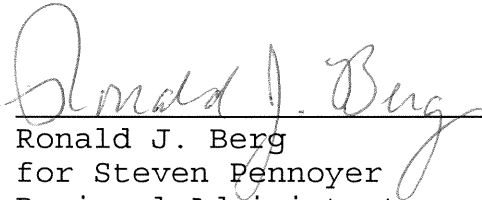
In Re Application of) Appeal No. 95-0012
)
DENNIS VAN SKY,) DECISION ON REVIEW
Appellant)
_____) AFFIRMED

On February 27, 1995, the Restricted Access Management (RAM) program, National Marine Fisheries Service (NMFS), issued an *Initial Administrative Decision (IAD)* which denied the application of Appellant Dennis Van Sky for halibut quota share (QS) under the halibut and sablefish Individual Fishing Quota (IFQ) program because he refused to waive the confidentiality of his fishing records maintained by the federal government and the State of Alaska. On March 10, 1995, appellant submitted a signed waiver to RAM. On March 16, 1995, RAM issued a second *IAD* which vacated the original *IAD* of February 27, and which found appellant eligible for issuance of QS under the program. However, the revised *IAD* found that appellant could not be issued an IFQ permit for the 1995 season because halibut poundage derived from his QS had not been reserved for him in the 1995 Quota Share Pool (QSP), which is calculated on January 31st of each year.


Appellant filed a timely appeal of the *IAD* (as revised) pursuant to the provisions of 50 C.F.R. 676.25(o). By its *Decision*, dated August 9, 1999, the Office of Administrative Appeals (OAA) reversed the *IAD*, and ordered that appellant be issued compensatory IFQ for the 2000 fishing season. The basis for the OAA's *Decision* was two-fold. First, the OAA found that the basis of the revised *IAD*'s denial of a IFQ permit for 1995 was mistaken. Halibut poundage associated with appellant's QS had been included in the 1995 QSP. Although this finding was sufficient for resolution of Mr. Van Sky's appeal, the OAA went on to find that, in this instance, RAM's policy of requiring applicants to waive confidentiality in order to have their applications processed did not comply with applicable regulation. On August 19, 1999, RAM filed a timely Request for Reconsideration in this matter. On February 28, 2000, the OAA issued a *Decision On Reconsideration*, in which it affirmed its earlier *Decision* of August 9, 1999. As the legal basis for its *Decision On Reconsideration*, the OAA repeated its two previous conclusions discussed in its earlier *Decision*, and added yet another "[a]lternative basis for relief": that the waiver language contained in RAM's Request for Application forms failed to comply

with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.¹

Pursuant to the provisions of 50 C.F.R. 676.25(o), I hereby AFFIRM the conclusion of the August 9, 1999 *Decision* of the OAA that the March 16, 1995 *IAD* issued in this matter should be reversed because RAM was mistaken as to whether halibut poundage was included in the QSP for the 1995 season. I find that this conclusion was sufficient to adequately resolve Mr. Van Sky's appeal, and that consideration by the OAA of the other issues discussed in both the *Decision* and *Decision on Reconsideration* was unnecessary, and thus inappropriate.



Ronald J. Berg
for Steven Pennoyer
Regional Administrator
Alaska Region



Date

¹ The *Decision on Reconsideration* also discussed a number of procedural issues raised in RAM's Request for Reconsideration. Neither the procedural issues raised by RAM, nor their resolution by OAA, are the subject of this *Decision on Review*.