

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0056
)	
JOHN STELLING,)	
Appellant)	
)	DECISION
and)	
)	
DARWIN C. BARRIE,)	
Respondent)	December 30, 1996
_____)	

STATEMENT OF THE CASE

Appellant John Stelling has filed a timely appeal of an initial administrative determination [IAD] of the Restricted Access Management Division [Division] of the National Marine Fisheries Service, dated March 20, 1995. The Division denied his application for halibut quota share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because he did not prove that he owned or leased a vessel that made legal landings of halibut during the QS qualifying years of 1988, 1989, or 1990.

On January 29, 1996, this office informed Respondent Darwin Barrie that the QS he had received for landings made from the F/V GLACIER ISLAND on June 6, 1990, was being challenged by Mr. Stelling. Thereafter, on January 30, 1996, Mr. Barrie was joined as a party and the transferability of the QS in question was ordered suspended, pending the resolution of this conflict. Mr. Barrie was given 30 days to respond to the notice of joinder and suspension of his QS. This office did not receive a reply to the notice. The record was closed on March 25, 1996. Mr. Stelling has adequately shown that his interests are directly and adversely affected by the IAD. No hearing was held concerning the appeal because the relevant facts are not in dispute.

ISSUE

Whether Appellant or Respondent owned the F/V GLACIER ISLAND during the QS qualifying years, 1988, 1989, and 1990.

SUMMARY

A United States Coast Guard abstract of title has established that Appellant John Stelling was the sole owner of the F/V GLACIER ISLAND from at least May 6, 1981, until October 16, 1990. The abstract also established that Respondent Darwin Barrie has been the sole owner of the vessel since

October 16, 1990. Mr. Barrie does not dispute Mr. Stelling's ownership prior to October 16, 1990. Mr. Barrie received credit for a halibut landing made from the vessel on June 6, 1990, based solely on State of Alaska vessel registration records. A Coast Guard abstract of title is superior to the state vessel registration records as evidence of vessel ownership. Mr. Stelling is a qualified person under 50 C.F.R. § 679.40(a)(2), and should receive halibut QS and IFQ based on landings made from his vessel during the time he owned it. The QS that Mr. Barrie received, based on landings made before he owned the vessel, should be revoked.

BACKGROUND

In his Request for Application [RFA] for QS, which was received by the Division on January 26, 1994, Appellant John Stelling claimed ownership of the F/V GLACIER ISLAND from 1981 through November 1989. In his application, filed July 8, 1994, he claimed 100% ownership of the F/V GLACIER ISLAND and the F/V EVIE, and halibut landings in 1986, 1987, and 1990. With his application, Mr. Stelling submitted a copy of a June 6, 1990, State of Alaska fish ticket that showed his halibut fishing permit number and landings of 4,078 pounds of halibut from the F/V GLACIER ISLAND. He also submitted a copy of a State of Alaska Commercial Fisheries Entry Commission [CFEC] halibut data sheet, which credited him with halibut landings from the F/V GLACIER ISLAND on June 2, 1987, October 2, 1987, and June 6, 1990.

On September 13, 1994, the Division asked Mr. Stelling to produce proof of ownership of the F/V GLACIER ISLAND. He was given until December 12, 1994, to do so. Mr. Stelling did not provide the proof, and his request for QS was denied on March 20, 1995. The Division credited Mr. Barrie with landings made from the F/V GLACIER ISLAND during the period of December 7, 1989, through December 31, 1991, based on CFEC records that showed Mr. Barrie as the registered owner of the vessel during that period of time. Mr. Barrie never claimed on his RFA that he owned the F/V GLACIER ISLAND. The Division, nevertheless, listed Mr. Barrie as owner of the vessel on his application, which he signed without objection.

On June 17, 1995, Mr. Stelling appealed his IAD, claiming ownership of the F/V GLACIER ISLAND during the QS qualifying years. He included with his appeal a copy of the June 6, 1990, Alaska fish ticket. On January 23, 1996, this office received from the U.S. Coast Guard an abstract of title for the F/V GLACIER ISLAND [Exhibit 1], which showed Mr. Stelling's ownership of the vessel from at least May 6, 1981, until October 16, 1990. The abstract showed that Mr. Barrie purchased the vessel on October 16, 1990, and has been the sole owner since that date. The Division's records show that landings of halibut were made from the vessel on June 2, 1987, October 2, 1987, and June 6, 1990, and that no one has received QS credit for the 1987 landings.

DISCUSSION

To qualify for QS under the IFQ program, a person must have owned or leased a vessel that made legal landings of halibut or sablefish during a QS qualifying year (1988, 1989, or 1990).¹ The best evidence of vessel ownership, if it exists, is a U.S. Coast Guard abstract of title. Absent evidence that an abstract of title is erroneous or fraudulent, the Division is required to accept that document as proof of ownership.²

Mr. Stelling has shown from the evidence produced on appeal that he owned, and made a legal landing of halibut from, the F/V GLACIER ISLAND during a QS qualifying year, 1990. According to the U.S. Coast Guard abstract of title, Mr. Stelling was the owner of the F/V GLACIER ISLAND from at least May 6, 1981 until October 16, 1990. In response to a request from this office, Mr. Barrie has never disputed Mr. Stelling's ownership, nor is there evidence in the record that the abstract is erroneous or fraudulent.

The only evidence in the record contrary to Mr. Stelling's claim of ownership is the information in the NMFS official record, derived from records supplied by the CFEC. The NMFS official record lists Mr. Barrie as the registered owner of the F/V GLACIER ISLAND from December 7, 1989, to December 31, 1991. The CFEC does not require proof of ownership upon registration of a vessel, nor does it consider its vessel registration records as establishing legal title or ownership.³ However, unlike the CFEC, the U.S. Coast Guard requires a vessel registration applicant to produce proof of vessel ownership before it will record a transfer of ownership on a vessel's abstract of title. Under Coast Guard regulations, an applicant for registration of a vessel must present a sworn bill of sale signed by the seller, showing the name and address of the seller and the buyer, and date of execution. Because reliable proof of ownership is required to document a vessel, a Coast Guard abstract of title that is not shown to be erroneous or fraudulent is better evidence of vessel ownership than an Alaska vessel registration. This fact is reflected in the superior position given to Coast Guard abstracts of title in the order of priority of documents specified in the IFQ regulation governing evidence of vessel ownership.⁴

¹See, 50 C.F.R. § 679.40(a)(2), formerly, 50 C.F.R. § 676.20(a)(1). Effective July 1, 1996, 50 C.F.R. Part 676 was removed and the regulations thereunder were renumbered. However, there have not been any changes material to the issues in this appeal.

²Prowler Partnership v. Samuelson Appeal No. 95-0084, November 8, 1995, at 5; incorporated by reference in Prowler Partnership v. Samuelson Decision on Reconsideration, March 12, 1996, *aff'd* March 14, 1996; *appeal pending*, Prowler Partnership v. National Marine Fisheries Service, Case No. A96126CIV (D.C. Alaska, complaint filed April 10, 1996); and Weber v. Kochuten, Appeal No. 95-0122, June 18, 1996, at 3.

³See, Weber v. Kochuten, *supra*, at 4.

⁴See, 50 C.F.R. § 679.40(a)(3)(ii), formerly, 50 C.F.R. § 676.20(a)(1)(ii).

Given the dates of Mr. Stelling's ownership listed on the abstract of title, which has not been shown to be erroneous or fraudulent, that the abstract is superior to the vessel registration of the F/V GLACIER ISLAND for determining ownership, and that Mr. Barrie has never denied Mr. Stelling's ownership of the vessel before October 16, 1990, I find by a preponderance of the evidence that the F/V GLACIER ISLAND was owned by Mr. Stelling from at least May 6, 1981, until October 16, 1990. Because this period included a halibut landing during 1990, a QS qualifying year, I conclude that Mr. Stelling is a qualified person under 50 C.F.R.

§ 679.40(a)(2).⁵ I further find that the NMFS official record showing Mr. Barrie as the owner of the F/V GLACIER ISLAND from December 7, 1989, to December 31, 1991, is in error, and that Mr. Barrie did not own the vessel until October 16, 1990.

FINDINGS OF FACT

1. Appellant John Stelling was the sole owner of the F/V GLACIER ISLAND from at least May 6, 1981, until October 16, 1990.
2. Respondent Darwin Barrie was the sole owner of the F/V GLACIER ISLAND beginning October 16, 1990.
3. The NMFS official record showing Mr. Barrie as the owner of the F/V GLACIER ISLAND from December 7, 1989, to December 31, 1991, is in error.

CONCLUSION OF LAW

Mr. Stelling is a qualified person under 50 C.F.R. § 679.40(a)(2).

DISPOSITION AND ORDER

The Division's IAD stating that Mr. Stelling is not qualified to receive halibut QS is VACATED. The Division is ORDERED to change the NMFS official record to show Mr. Stelling as the owner of the F/V GLACIER ISLAND from May 6, 1981, until October 16, 1990, and to issue him the resultant QS and 1997 IFQ. The Division is further ORDERED to revoke halibut QS issued to Mr. Barrie resulting from landings made from the F/V GLACIER ISLAND on June 6, 1990.

This decision takes effect on January 29, 1997, unless by that date the Regional Administrator orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 4:30 p.m. Alaska Standard Time, on the tenth day after

⁵The NMFS Official Record indicates that halibut landings were made from the F/V GLACIER ISLAND on June 2, 1987, October 2, 1987, and June 6, 1990.

the date of this Decision, January 9, 1997. A Motion for Reconsideration must be in writing, must allege one or more specific, 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.

Because the prevailing party in this appeal still has an opportunity to receive QS and the corresponding IFQ for the 1997 fishing season, I recommend that the Regional Administrator expedite review of this Decision and, if there is no substantial disagreement with it, promptly affirm the Decision and thereby give it an immediate effective date.

Randall J. Moen
Appeals Officer