

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0095
)	
JOHN C. GREGORY,)	DECISION
Appellant)	
_____)	April 27, 2000

STATEMENT OF THE CASE

Appellant John C. Gregory filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ on April 12, 1995. The IAD denied Mr. Gregory's claim for additional halibut quota share [QS] under the Individual Fishing Quota [IFQ] program. The claim was based on the hardship caused by the Exxon Valdez oil spill during 1989 and 1990, and on his dissolved partnership with Mr. Noel Pallas, which landed halibut from the F/V NAIAD in 1984.

On appeal, Mr. Gregory asks to substitute the halibut landings he made in 1979, 1980, and 1991 for the halibut landings he did not make in 1989 and 1990 because of the Exxon Valdez oil spill. He also claims credit for halibut landings made from the F/V CRACK O'DAWN in October, 1988, pursuant to his partnership with Mr. John Renner, the owner of the vessel.² Mr. Gregory withdrew his claim for the halibut landed from the F/V NAIAD in 1984, based on his partnership with Mr. Noel Pallas.³

In this Decision, I conclude that Mr. Gregory is not entitled to additional halibut QS. We did not order an oral hearing because the record contains sufficient information to reach a final decision, and because there was no genuine and substantial issue of adjudicative fact for resolution.⁴

¹The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997.

²Mr. Gregory made the claim during RAM's consideration of his application for QS (in a letter dated February 3, 1995), but RAM did not address the claim in the IAD.

³See the letter from Mr. Gregory's attorney, Ms. Susan Reeves, dated November 2, 1998, which requested dismissal of the claim. Mr. Gregory withdrew his claim because he had already received full credit for the halibut landed from the F/V NAIAD.

⁴50 C.F.R. § 679.43(g), formerly 50 C.F.R. § 676.25(g)(3). All IFQ regulations were renumbered effective July 1, 1996. See 61 Fed. Reg. 31, 270 (1996). However, there were no substantive changes material to this appeal.

ISSUES

1. Is Mr. Gregory entitled to IFQ credit for halibut landed by him in 1979, 1980, and 1991, to compensate for halibut landings he did not make in 1989 and 1990 because of the Exxon Valdez oil spill?
2. Is Mr. Gregory entitled to additional halibut QS, based on halibut landed from the F/V CRACK O'DAWN in 1988 because of his partnership with Mr. John Renner?
3. Is Mr. Gregory entitled to additional halibut QS, based on halibut landed from the F/V CRACK O'DAWN in 1988 that were not recorded on state fish tickets, but kept for personal consumption?

BACKGROUND

RAM awarded halibut QS to Mr. Gregory, based on halibut landed from the F/V NAIAD during 1984, 1986, 1987, 1989, and 1990. Mr. Gregory wants to substitute halibut landings made in 1979, 1980, and 1991 for the halibut landings he failed to make in 1989 and 1990 because of the hardship caused by the Exxon Valdez oil spill. He also wants additional IFQ credit for halibut landed from the F/V CRACK O'DAWN in 1988, based on his partnership with Mr. John Renner, the vessel owner. Mr. Gregory seeks credit for all of the partnership's landings, due to Mr. Renner's willingness to assign his portion of the partnership's landings to Mr. Gregory. Mr. Gregory's claim for the partnership's landings includes the halibut that were not recorded on a state fish ticket, but kept for personal consumption by the individual partners and crew. RAM's Official IFQ Record does not show that halibut was landed from the F/V CRACK O'DAWN in 1988. Nor does the record show that Mr. Renner ever applied for QS.

PRINCIPLES OF LAW

1. A person must be a "qualified person" in order to receive an initial allocation of QS under the IFQ program. 50 C.F.R. § 679.40(a)(1).
2. A "qualified person" means a person (as defined in § 679.2) that owned or leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. 50 C.F.R. § 679.40(a)(2)(I)(A).
3. A partnership is a "person" for purposes of qualifying for QS. 50 C.F.R. § 679.2.
4. A QS qualifying year is 1988, 1989, or 1990. 50 C.F.R. § 679.40(a)(3)(I).
5. A "legal landing" of halibut or sablefish means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing. 50 C.F.R. §

679.40(a)(3)(v)(A).

6. Evidence of legal landings is limited to documentation of state or Federal catch reports. State catch reports are Alaska, Washington, Oregon, or California fish tickets.

50 C.F.R. § 679.40(a)(3)(v)(B).

7. NMFS is required to calculate a qualified person's halibut QS, based on that person's highest total legal landings of halibut in each IPHC regulatory area for any 5 years of the 7 year halibut QS base period, 1984-1990. 50 C.F.R. § 679.40(a)(4).

8. A former partner of a dissolved partnership who would otherwise qualify as a qualified person for QS, may apply for QS in proportion to his or her interest in the dissolved partnership.

50 C.F.R. § 679.40(a)(2)(iii).

DISCUSSION

1. Is Mr. Gregory entitled to IFQ credit for halibut landed by him in 1979, 1980, and 1991, to compensate for halibut landings he did not make in 1989 and 1990 because of the Exxon Valdez oil spill?

The IFQ regulations provide that a qualified person's QS must be calculated according to the person's highest total of *actual* landings (for 5 of the 7 years) during the QS base period of 1984 and 1990.

We have ruled in several cases that the IFQ regulations do not provide an exception to this rule, be it for hardship or special circumstance;⁵ nor am I empowered to create one. The North Pacific Fishery Management Council expressly rejected allowing QS on the basis of hardship or unavoidable circumstance.⁶ As an Appeals Officer, I am bound by the requirements of the IFQ regulations, and I do not have the authority to create individual exceptions for individual cases.

The evidence in the record shows that Mr. Gregory's highest total legal landings of halibut for 5 of the 7-year base period between 1984 and 1990 were made in 1984, 1986, 1987, 1989, and 1990. Mr. Gregory cannot substitute his halibut landings in years 1979, 1980, and 1991 for the halibut landings made in 1989 and 1990 because the landings were not actually made during the QS base period for

⁵See e.g. Kenneth M. Adams, Appeal No. 95-0004, March 22, 1995; William Crump, Appeal No. 95-0024, June 27, 1995; Jimmy D. Hutchens, Appeal No. 95-0094, June 28, 1995; and Michael C. Hatten, Appeal No. 95-0136. (In these decisions, Appellants argued that they would have had landings, but for the Exxon Valdez oil spill).

⁶The Council made the decision at its September 28-October 5, 1994, meeting. See the Council's newsletter, October 21, 1994, at p.6. See also Hardship Cases Under the Halibut and Sablefish IFQ Program, NMFS, September 15, 1994, NMFMC Agenda Item, C-3(b).

calculating QS. Nor can any of those years be substituted for 1989 and 1990 because of any hardship or special circumstance. As a result, Mr. Gregory is not entitled to additional halibut QS as a result of the Exxon Valdez oil spill.

2. Is Mr. Gregory entitled to additional halibut QS, based on halibut landed from the F/V CRACK O'DAWN in 1988 because of his partnership with Mr. John Renner?

RAM's Official IFQ Record does not show that the F/V CRACK O'DAWN made halibut landings in 1988. Nor did Mr. Gregory produce state fish tickets or federal catch reports for the claimed landings. We have ruled that a halibut or sablefish landing must have been reported on a state fish ticket or a federal catch report to qualify as a "legal landing" under the IFQ program.⁷ Because those documents have not been produced, there is no evidence that legal landings of halibut were made from the vessel in 1988. As a result, Mr. Gregory cannot be issued halibut QS for the claimed landings. Therefore, Mr. Gregory is not entitled to additional QS, based on the halibut landed from the F/V CRACK O'DAWN in 1988.

3. Is Mr. Gregory entitled to additional halibut QS, based on halibut landed from the F/V CRACK O' DAWN in 1988 that were not recorded on state fish tickets, but kept for personal consumption?

As previously stated, neither RAM's Official IFQ Record, nor state fish tickets, nor federal catch reports show the F/V CRACK O'DAWN landed halibut in 1988. Without such proof, Mr. Gregory does not have evidence that the vessel made legal landings (for purposes of IFQ). Therefore, even if the halibut was landed and kept for personal consumption, Mr. Gregory could not be issued additional halibut QS.

FINDINGS OF FACT

1. Mr. Gregory's highest total legal landings for 5 of the 7 years between 1984 and 1990 were 1984, 1986, 1987, 1989, and 1990.
2. Neither RAM's Official IFQ Record, nor state fish tickets or federal catch reports, show that the F/V CRACK O'DAWN landed halibut in 1988.

CONCLUSIONS OF LAW

1. Mr. Gregory cannot substitute the halibut landings he made in years 1979, 1980, and 1991 to compensate for the halibut landings he did not make in 1989 and 1990.

⁷See e.g. Leonard Leach, Appeal No. 95-0115, Decision on Review, August 31, 1998.

2. The years of 1979, 1980, and 1991 cannot be substituted for 1989 and 1990 because of hardship or special circumstance.
3. Mr. Gregory is not entitled to additional halibut QS, based on halibut landings he would have made but for the Exxon Valdez oil spill.
4. The F/V CRACK O'DAWN did not make legal landings of halibut in 1988.
5. Mr. Gregory is not entitled to additional halibut QS, based on the halibut landed from F/V CRACK O'DAWN in 1988.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on May 29, 2000, 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 the tenth day after the date of this Decision, May 8, 2000. 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.

Randall J. Moen
Appeals Officer