

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0099
)	
CHRIS L. SHARPSTEEN,)	DECISION
Appellant)	
_____)	January 26, 1999

STATEMENT OF THE CASE

Appellant Chris L. Sharpsteen filed a timely appeal of an Initial Administrative Determination [IAD] issued on April 18, 1995, by the Restricted Access Management program¹ [RAM]. The IAD denied his application for additional halibut quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program. Mr. Sharpsteen's interests are directly and adversely affected by the IAD. No hearing was held because the relevant facts are not in dispute.

ISSUES

1. Can RAM award IFQ credit for qualifying pounds of halibut that were aboard the harvesting vessel when the vessel was lost at sea?
2. Can RAM award IFQ credit for qualifying pounds of halibut that might have been harvested and landed if the Appellant's vessel had not sunk?

BACKGROUND

Mr. Sharpsteen claims IFQ credit for 10,000 pounds of halibut that were harvested by the F/V STAMPER and that were still aboard when the vessel was lost at sea on April 29, 1985. RAM denied Mr. Sharpsteen's application on the grounds that it did not have the authority to allocate qualifying pounds that (1) were not actually landed, even though due to a hardship or special circumstance; and (2) are not supported by the evidence required by the IFQ regulations, in this instance by Alaska state fish tickets.

On appeal, Mr. Sharpsteen argues that the 10,000 pounds of halibut lost at sea were "legally landed" as defined by regulation, and that he should receive IFQ credit for them. He also argues that he should receive IFQ credit for additional landings of halibut that he believes would have been made in 1985, 1986, and 1987 if his vessel had not been lost at sea.

¹The Restricted Access Management Division was renamed Restricted Access Management program, effective September 28, 1997. [NOAA Circular 97-09, 19 Sep 97].

In support of his appeal, Mr. Sharpsteen submitted the following documents:

- (1) a June 9, 1995, letter from Edward Haugen, a fish buyer for Petersburg Fisheries at the Security Bay Scow, who says he witnessed approximately 10,000 pounds of halibut aboard the F/V STAMPER at 2:30 a.m., April 29, 1985;
- (2) a copy of the newspaper, the Petersburg Pilot, Vol. XL No. 08, dated May 2, 1985, which documented the sinking of the F/V STAMPER with the loss of 10,000 pounds of halibut;
- (3) a copy of state and federal regulations for 1985, setting forth the types of records required for halibut that are caught and sold;
- (4) a June 2, 1995, letter from Barry Bracken of the Alaska Department of Fish and Game [ADFG], stating that a state fish ticket is not required for fish on vessels lost at sea;
- (5) copies of state fish tickets for years 1981-1983 and 1991-1993;
- (6) a June 23, 1994, letter from Mr. Sharpsteen regarding the hardship caused by the loss of his vessel;
- (7) a copy of a May 8, 1985, proof of loss statement from Albany Insurance for 10,000 pounds of halibut aboard the F/V STAMPER; and
- (8) a copy of a May 4, 1985, U.S. Coast Guard marine accident report by Mr. Sharpsteen for 10,000 pounds of halibut lost aboard the F/V STAMPER.

DISCUSSION

1. Can RAM award IFQ credit for qualifying pounds of halibut that were aboard the harvesting vessel when the vessel was lost at sea?

To receive credit for halibut under the IFQ regulations, as implemented by RAM, an applicant must show that the fish were legally landed during the QS base years, [1984-1990]² from a vessel owned or leased by the applicant at the time of the landing. To be considered a "legal landing," the fish must have been harvested with fixed gear and "landed" in compliance with state and federal regulations in effect at

²50 C.F.R. § 679.40(a)(2) and 50 C.F.R. § 679.40(a)(4)(i).

the time of the landing.³

Mr. Sharpsteen claims IFQ credit for an estimated 10,000 pounds of halibut harvested aboard a vessel that was subsequently lost at sea. In order to be eligible for IFQ credit, the fish must have been landed. In Leonard Leach,⁴ we defined a "landing" as the offloading of fish from a vessel. As in Leach, Mr. Sharpsteen's fish were never offloaded; they went down with the vessel. Thus, even if fish had been legally harvested, they were not landed. Therefore, I conclude that the 10,000 pounds of halibut lost at sea were not legally landed and cannot be credited for IFQ purposes.

2. Can RAM award IFQ credit for qualifying pounds of halibut that might have been harvested and landed if the Appellant's vessel had not sunk?

This Office has denied relief to several appellants who sought IFQ credit for landings they estimated they would have been made but for an unavoidable circumstance or hardship.⁵ We have ruled in these appeals that RAM has no authority to allocate qualifying pounds that are not based on actual landings made during the base year period. We did so because the North Pacific Fishery Management Council expressly rejected allowing QS on the basis of hardship or unavoidable circumstance.⁶ The Council determined that providing a three-year qualifying period and allowing applicants to select their best five years of landings during the QS base years was sufficient to compensate applicants whose landings had been reduced as a result of circumstances beyond their control. Following these precedents, I conclude that RAM does not have authority to award IFQ credit for qualifying pounds of halibut that might have been harvested and landed if the Appellant's vessel had not sunk.

FINDING OF FACT

Approximately 10,000 pounds of halibut were still aboard the F/V STAMPER when the vessel sank on or about April 29, 1985, and were never offloaded from the vessel.

CONCLUSIONS OF LAW

³50 C.F.R. § 679.40(a)(3)(v)(A).

⁴Appeal No. 95-0115, May 6, 1998, *aff'd*, August 31, 1998.

⁵*See*, Kenneth M. Adams, Appeal No. 95-0004, March 22, 1995; William E. 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, January 30, 1996. (All of these cases deal with the EXXON VALDEZ oil spill in 1989, in which appellants argued that they would have had landings, but for the spill).

⁶The Council made the decision at its September 28-October 5, 1994, meeting.

1. A "landing" of halibut or sablefish occurs, for purposes of the initial issuance of QS, when the fish are offloaded from the harvesting vessel.
2. The estimated 10,000 pounds of halibut lost at sea when the F/V STAMPER sank were not landed or legally landed and, therefore, RAM properly denied IFQ credit for these pounds.
3. RAM has no authority to allocate qualifying pounds that are not based on actual landings made during the base year period.
4. RAM properly denied IFQ credit for qualifying pounds of halibut that the Appellant claimed might have been harvested and landed if the Appellant's vessel had not sunk.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on February 25, 1999, unless by that date the Regional Administrator orders review of the Decision.

Any party, including RAM, may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m., Alaska Time, on February 5, 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.

Randall J. Moen
Appeals Officer