

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 95-0108  
)  
ROGER ATTWOOD, ) DECISION  
Appellant )  
\_\_\_\_\_ ) April 2, 1999

STATEMENT OF THE CASE

The Appellant, Roger Attwood, filed a timely appeal of the Initial Administrative Determination [IAD] issued on May 3, 1995, by the Restricted Access Management [RAM] program.<sup>1</sup> The IAD denied Mr. Attwood's request to have his halibut quota share [QS] reassigned from vessel category "C" to vessel category "A" under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program. Mr. Attwood has adequately shown that his interest is directly and adversely affected by the IAD. Because the record contains sufficient information on which to reach a final decision, and because there is no genuine and substantial issue or adjudicative fact for resolution, no hearing was ordered.<sup>2</sup>

ISSUE

Should Mr. Attwood's halibut QS be reassigned from vessel category "C" to vessel category "A"?

DISCUSSION

Mr. Attwood applied for and received QS based on 392 pounds of halibut that were landed on June 22, 1988, from his vessel, the F/V CHARITY. RAM issued the QS for vessel category "C," which covers catcher vessels from over 35 feet to 60 feet length overall [LOA]. The F/V CHARITY is a 46-foot LOA freezer vessel. Mr. Attwood seeks to have his halibut QS reassigned to vessel category "A," which is for freezer vessels of any length. To qualify for vessel category "A" halibut QS, an applicant must have processed halibut aboard the freezer vessel during the applicant's "most recent year of participation" within the period January 1, 1988 through September 25, 1991. Mr. Attwood's most recent year of participation for halibut was 1988. Mr. Attwood claims that he froze the halibut in question while at sea, and that freezing the fish constitutes processing. RAM denied his request to reassign the QS on the grounds that he did not provide any evidence that he landed processed halibut

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<sup>1</sup>The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 19 Sep 97].

<sup>2</sup>See, 50 C.F.R. § 679.43(g); formerly, 50 C.F.R. § 676.25(g). All IFQ regulations were renumbered, effective July 1, 1996. See, 61 Fed. Reg. 31,270 (1996). The wording of the regulations in question was unchanged by the renumbering.

from the vessel or that he had a federal processing license in 1988.

On appeal, Mr. Attwood points out that the June 22, 1988, fish ticket evidencing the halibut landing shows the initials "FAS," which he says means frozen at sea. He also states that his vessel is not equipped to hold or store frozen product, and that since 1981 he has frozen all his fish aboard the vessel. As additional evidence that his vessel is a freezer vessel, Mr. Attwood points to a 1994 Alaska Department of Revenue fisheries business license authorizing the F/V CHARITY to operate as a floating processor. He also relies on a 1994 Alaska Department of Environmental Conservation permit to operate as a seafood processing facility issued to his vessel. Finally, Mr. Attwood relies on a July 25, 1988, fish ticket showing his processor code, which he states he still holds today.

In the IAD, RAM states that its official record lists the F/V CHARITY as a catcher vessel only, not as a catcher/processor vessel. RAM also stated that NMFS/Enforcement records do not indicate that Mr. Attwood ever applied for a federal processing permit. A record this Office obtained from the Alaska Department of Fish and Game shows that Mr. Attwood held a Fisheries Business License and had filed an intent to operate as of July 28, 1988. It lists the F/V CHARITY as a catcher/processor. The code on this record matches the processor code on Mr. Attwood's July 25, 1988, fish ticket. The record shows, however, that Mr. Attwood's vessel was authorized to process only salmon and herring. This information is consistent, however, with Mr. Attwood's claim that the halibut was harvested incidentally, as by-catch while salmon trolling.

The preponderance of the evidence supports a finding that the F/V CHARITY is a catcher/processor vessel, and was one at the time of the 1988 halibut landing. In light of the evidence that the F/V CHARITY is a catcher/processor, I accept as reasonable Mr. Attwood's assertions that the "FAS" on the fish ticket means the halibut were frozen at sea. Although the federal regulations governing halibut fishing off Alaska in 1988 (as well as in 1994 when Mr. Attwood applied for QS) did not define "processing" with respect to halibut, "processing" has been defined elsewhere in federal regulations, particularly with respect to groundfish off Alaska, as including the freezing of fish. Today, that is part of the definition of processing for both groundfish and halibut. *See*, 50 C.F.R. § 679.2 and former § 672.2. Also, under Alaska regulations in effect at the time of Mr. Attwood's 1988 halibut landing, freezing constituted processing. *See*, 18 AAC 34.910(35)(1984). Thus, I conclude that freezing the halibut aboard the F/V CHARITY in June 1988 constituted processing.

That does not end the inquiry, however, for implicit in the IFQ regulations is a requirement that the processing must have been done lawfully in order to serve as the basis for obtaining a vessel category "A" reassignment. My research indicates that in 1988 there was no requirement that a catcher/processor vessel be issued a federal processing license in order to lawfully freeze halibut at sea, whether the fish was targeted or incidental catch. Therefore, I conclude that Mr. Attwood's failure to produce evidence that he had a federal processing license in 1988 is not a proper basis for denying his request to reassign his QS to vessel category "A". But there were state law requirements with which Mr. Attwood had to comply in order for the freezing of halibut aboard his vessel to be considered

lawful processing, for purposes of vessel category assignment.

Under Alaska regulations in effect in 1988, Mr. Attwood would have had to comply with at least three requirements for the processing of fish aboard his vessel to be lawful. Before processing the halibut, he would have needed to obtain an Alaska Department of Environmental Conservation [ADEC] seafood processor's permit [18 AAC § 34.020] and an Alaska Department of Revenue Fisheries Business License [AS 43.75.011], and he also would have had to file a written intent to operate with the Alaska Department of Fish and Game [5 AAC § 39.130]. An inquiry by this Office with the ADEC revealed that Mr. Attwood obtained a seafood processor's permit on January 7, 1988. As stated earlier in this Decision, however, Mr. Attwood did not obtain a Fisheries Business License or file an intent to operate until July 28, 1988, which was more than a month after the June 22, 1988 halibut landing. Therefore, I find that Mr. Attwood did not comply with all the state requirements applicable to halibut processing, and I conclude that the freezing of the halibut aboard his vessel in June 1988 was not lawful for purposes of the IFQ program. Therefore, on these independent grounds, I conclude that Mr. Attwood is not entitled to have his halibut QS reassigned to vessel category "A".

#### FINDINGS OF FACT

1. The F/V CHARITY is a catcher/processor vessel, and was one at the time of the 1988 halibut landing.
2. Mr. Attwood did not comply with all the state requirements applicable to halibut processing in June 1988.

#### CONCLUSIONS OF LAW

1. The freezing of the halibut aboard the F/V CHARITY in June 1988 constituted processing.
2. The freezing of the halibut aboard the F/V CHARITY in June 1988 was not lawful for purposes of the IFQ program.
3. Mr. Attwood is not entitled to have his halibut QS reassigned to vessel category "A".

#### DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED** on the grounds stated in this Decision. This Decision takes effect on May 3, 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 April 12, 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.

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Edward H. Hein  
Chief Appeals Officer