

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0113
)
NORMAN E. MAPES,) DECISION
Appellant)
_____) August 26, 1998

STATEMENT OF THE CASE

Appellant Norman Mapes filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on May 3, 1995. The IAD denied Mr. Mapes' application for halibut and sablefish quota share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because he did not have sufficient proof that he had made of a legal landing of halibut during the QS qualifying years (1988, 1989, or 1990). Mr. Mapes has adequately shown that his interests are 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 of adjudicative fact for resolution, no hearing was ordered.²

ISSUE

Did Mr. Mapes make a legal landing of halibut from a vessel owned or leased by him during the QS qualifying years?

BACKGROUND

Mr. Mapes claims that he made legal landings of halibut from a vessel he owned during the QS qualifying years. RAM's records do not show that legal landings of halibut were made from any vessel he owned during that period of time. Mr. Mapes has not presented any state fish tickets for the landings of the fish, nor does he claim that any fish tickets ever existed. Neither RAM, the State of Alaska, nor the International Pacific Halibut Commission [IPHC], have a record of Mr. Mapes's claimed landings.

In lieu of state fish tickets, Mr. Mapes submitted receipts for halibut sold retail to various businesses.

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

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

He also submitted a written list of estimated pounds of halibut he claims he sold retail, kept for himself, or gave to his family. In his written letter of appeal, Mr. Mapes alleges that (1) his past and present participation in the halibut fisheries qualify him for QS; (2) it is arbitrary to limit proof of legal landings to state fish tickets; and (3) the IFQ program violates common law, the 9th and 10th Amendments of the U.S. Constitution, and the Magnuson-Stevens Act.

On July 10, 1996, Mr. Mapes was ordered by this Office to produce additional proof of his alleged landings. On October 15, 1997, he responded with a letter in which he additionally claimed that:

- # he has been a resident of Alaska since 1957;
- # he is a disabled World War II veteran;
- # he has had a commercial halibut fishing license since 1967;
- # he has fished halibut every year until he was denied IFQ in 1995;
- # he has made substantial financial investments in halibut fishing (boat, hooks, ground lines, freezer, buoys, anchors);
- # he obtained a processing permit in 1990;
- # he has paid sales taxes and filed federal income tax returns relating to his fishing activities;
- # there are IPHC reports for halibut harvested by him during 1989-1994; and
- # he was never told that his claimed landings had to be reported [on state fish tickets] to the Alaska Department of Fish and Game.

DISCUSSION

To qualify for QS under the regulations of 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.³ 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 the time of the landing.⁴ The term “landing” is defined as “offloading fish.”⁵

Under the Alaska state regulations in effect at the time of Mr. Mapes’s claimed landings,⁶ persons who catch and process their own catch or who sell their catch to unlicensed fish buyers are required to

³50 C.F.R. § 679.40(a)(2).

⁴50 C.F.R. § 679.40(a)(3)(v)(A).

⁵50 C.F.R. § 679.2 (Definitions).

⁶*See*, 5 AAC 39.130(b).

record the landings of the fish on a state of Alaska fish ticket; to deliver the fish ticket to the state of Alaska; and to provide the necessary information for the completion of the state fish ticket. These responsibilities must be fulfilled before such a person can qualify for QS under the IFQ program.

Mr. Mapes claims that his past and present fishing activities in the halibut fisheries qualify him for QS. He has submitted no proof that halibut was offloaded from a vessel he owned or leased during a QS qualifying year. Nor has he submitted proof that the halibut was harvested with fixed gear, during a legal commercial opening, and in an appropriate IFQ area. Mr. Mapes's evidence shows only that he sold halibut retail to commercial businesses, and kept some of the halibut (that he allegedly caught) for himself and his family.

Mr. Mapes also has submitted no proof that he recorded his claimed landings on state fish tickets, or that he reported any of his claimed landings to the state of Alaska on state fish tickets. If Mr. Mapes landed the fish as claimed, he would have been required under the state regulations to satisfy those responsibilities. Mr. Mapes claims that it is "arbitrary" to limit proof of legal landings to state fish tickets. While the IFQ regulations do not, per se, limit the use of evidence to prove the legal landing of fish, the regulations do require that fish be landed in compliance with state and federal laws and regulations in effect at the time of the landings.

Because there is no evidence in the record that halibut was harvested or offloaded from a vessel owned or leased by Mr. Mapes, and because there is no proof that Mr. Mapes complied with state law in the recording and reporting of his claimed landings (via state fish tickets), I conclude that no legal landings of halibut were made from a vessel owned or leased by him during the QS qualifying years. Consequently, Mr. Mapes is not eligible for QS.

Mr. Mapes claims that he was never told that he had to report his landings to the state of Alaska on state fish tickets. Ignorance of the law is no defense. The state regulations in effect at the time of Mr. Mapes's claimed landings clearly required the reporting of a person's catch on a state fish ticket. I also note that the reporting of harvested fish on a state fish ticket was (and still is) standard practice throughout the industry at the time of Mr. Mapes's claimed landings.

Mr. Mapes claims that the IFQ program violates common law, the 9th and 10th Amendments of the U.S. Constitution, and the Magnuson-Stevens Act. However, challenges to the legality of the IFQ regulations are not within the purview of this Office. An Appeals Officer [AO] must presume the legality of the agency's own duly promulgated regulations.⁷ The IFQ regulations were duly promulgated through notice and comment rulemaking pursuant to the requirements of the Administrative Procedure

⁷See, e.g., Charles J. Petticrew, Appeal No. 95-0008, July 3, 1996; George Ramos, Appeal No. 94-0008, Regional Director's Decision on Review, at 4, April 21, 1995.

Act, 5 U.S.C. § 553 (1988).⁸ Therefore, the AO has no authority to invalidate IFQ regulations and to order relief sought on the grounds that the regulations are unlawful or unconstitutional. Such broad authority lies with the courts. I further note that the IFQ regulations have been upheld as a permissible exercise of the Secretary of Commerce's authority.⁹

FINDINGS OF FACT

1. Mr. Mapes did not record on state fish tickets (or report to the state of Alaska, via state fish tickets) the halibut he claims he sold retail to businesses, delivered to his family, or kept for himself.
2. There is no evidence in the record that halibut was offloaded from a vessel owned or leased by Mr. Mapes during a QS qualifying year.
3. There is no evidence in the record that halibut was harvested with fixed gear, during a legal commercial opening, and in an appropriate IFQ area, from a vessel owned or leased by Mr. Mapes during the QS qualifying period.

CONCLUSIONS OF LAW

1. Mr. Mapes was required under Alaska state law to record the landings of his claimed fish on a state fish ticket, and to report those landings to the state of Alaska on a state fish ticket.
2. Mr. Mapes did not make any legal landings of halibut or sablefish from a vessel owned or leased by him during the QS qualifying period.
3. Challenges to the legality or constitutionality of the IFQ regulations are not within the purview of this Office.

DISPOSITION

The IAD denying Mr. Mapes's application for halibut and sablefish QS is **AFFIRMED**. This decision takes effect August 26, 1998, 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 at this

⁸Id., at 2. *See*, 58 Fed. Reg. 59,375 (1993).

⁹*See*, Alliance Against IFQs v. Brown, et al, Opinion No. 95-35077, dated May 22, 1996 (9th Cir. 1996).

Office not later than 4:30 p.m., Alaska Time, on the tenth day after the date of this Decision, September 8, 1998. 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