

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 95-0113  
)  
NORMAN E. MAPES, ) ORDER GRANTING MOTION FOR  
Appellant ) RECONSIDERATION; AND DECISION  
) ON RECONSIDERATION  
)  
\_\_\_\_\_) September 15, 1998

On August 26, 1998, this Office issued a Decision that affirmed the IAD in which RAM denied Mr. Mapes's application for QS. Mr. Mapes was given until September 8, 1998, to file a Motion for Reconsideration. The standard for a Motion for Reconsideration is whether the Appeals Officer overlooked or misunderstood one or more material matters of fact or law.

On September 8, 1998, Mr. Mapes filed a letter with NMFS [Exhibit 1], in which he claimed to have made a halibut landing on October 10, 1989, at Homer, Alaska. He asserts that the landing was reported to the International Pacific Halibut Commission [IPHC], but that the IPHC cannot find the report. This claim essentially reiterates the claim Mr. Mapes made in a letter, dated July 30, 1998, and received at this Office on August 10, 1998 [Exhibit 4].

Because this claim was not specifically addressed in the Decision, I will treat Mr. Mapes's latest letter as a Motion for Reconsideration. The motion is GRANTED.

#### BACKGROUND

Reading both of Mr. Mapes's letters in the light most favorable to him, he writes that his vessel, the F/V DEETERMAN, was boarded by an Officer Frederick F. Koontz<sup>1</sup> on October 10, 1989, while Mapes was unloading halibut at Homer, Alaska. He states that Officer Koontz found 36 small halibut aboard that had been filleted, and that Officer Koontz made out a report, which was submitted to the IPHC. According to Mr. Mapes, the report stated that he was the owner and operator of the vessel, and that the fish were harvested during the IPHC commercial opening in regulatory area A. Mr. Mapes asserts that the IPHC lost this report. He states that he was fined \$7,800 as a result of this fisheries violation.

Mr. Mapes did not submit any fish tickets for the claimed landing. Two letters from the IPHC to Mr. Mapes, dated September 8, 1998, and August 9, 1996 [Exhibit 3], both state that the IPHC does not have any records of commercial landings for the F/V DEETERMAN for the years 1988 - 1990.

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<sup>1</sup>Mr. Mapes does not state which law enforcement agency Officer Koontz was from, but he states that the officer's report "came from the same address as yours," i.e., NOAA.

Mr. Mapes contends that he should receive IFQ credit a landing reported to the IPHC, even though the landing was not recorded on a state fish ticket. It is his belief that "halibut reported to the Halibut Commission [IPHC] should be as good as [landings] reported [on state fish tickets] to Fish and Game." [Exhibit 3]

## DISCUSSION

Mr. Mapes has submitted no evidence, other than his bare assertions, that he legally landed halibut on October 10, 1989, or that the claimed landing was ever reported on a state of Alaska fish ticket. In fact, he appears to concede that a fish ticket was never made out or submitted.

Under IFQ regulation 50 C.F.R. § 679.40(a)(3)(v)(A), a landing cannot receive IFQ credit as a "legal landing" unless the landing was made in compliance with state and federal regulations in effect at the time of the landing. Under an Alaska state regulation in effect on October 10, 1989, the claimed landing was required to be recorded on a state fish ticket, and the ticket was required to be submitted to the state. [5 AAC § 39.130(b)] The weight of the evidence is that Mr. Mapes did not comply with this state regulation. Therefore, I conclude that the claimed landing was not a "legal landing" for IFQ purposes and cannot be credited under the IFQ program.

In addition, 50 C.F.R. § 679.40(a)(3)(v)(B) limits evidence of legal landings to state fish tickets.<sup>2</sup> Therefore, even if Mr. Mapes had submitted a copy of the alleged IPHC report, it would not have been admissible evidence of a legal landing. If Mr. Mapes had asserted and proven that he had reported the claimed landing on an Alaska fish ticket in compliance with state regulations, but that all copies of the ticket had been lost or destroyed, this Office may have considered other evidence of the landing to establish the information that a fish ticket would have provided. But that is not the case here.

## FINDING OF FACT

The October 10, 1989, halibut landing claimed by Mr. Mapes was not recorded on an Alaska state fish ticket and was not submitted to the state, as required by 5 AAC § 39.130(b).

## CONCLUSION OF LAW

Mr. Mapes's claimed October 10, 1989, halibut landing was not a "legal landing" for IFQ purposes and cannot be credited under the IFQ program.

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<sup>2</sup>Federal weekly production reports also can be used as evidence of legal landings, but those reports do not apply to Mr. Mapes's claimed landing.

## DISPOSITION

The Decision in this appeal, dated August 26, 1998, is AFFIRMED and incorporated by reference. The effective date of the Decision is VACATED. This Decision on Reconsideration takes effect on October 15, 1998, unless the Regional Administrator orders review of this Decision on Reconsideration.

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Randall J. Moen  
Appeals Officer