

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
)
WESLEY BAIRD,)
Appellant)
_____)
Appeal No. 95-0119
DECISION
December 18, 1997

STATEMENT OF THE CASE

Appellant Wesley Baird filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on March 27, 1995. The IAD denied Mr. Baird's application for an additional 14,343 pounds of halibut quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program because he failed to provide sufficient evidence to show that he legally landed the halibut under the requirements of the IFQ program. Mr. Baird has adequately shown his interests are adversely and directly 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

Whether Mr. Baird is eligible to receive credit for an additional 14,343 qualifying pounds of halibut.

BACKGROUND

After RAM determined that Mr. Baird held a 50% interest in the partnership with Ms. Penny Ripple, which leased the F/V PENNY J during the years 1984-1989,³ and that he owned the vessel in 1990, Mr. Baird was issued 10,284 qualifying pounds of halibut QS.⁴ The amount of QS issued to Mr. Baird was based on his best five of seven years of landings during the QS base period (1984-1990), which were 1984-1988.

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).

³See, the signed, notarized statement of Ms. Ripple, dated October 4, 1994, submitted by Mr. Baird, which was approved by RAM.

⁴See, the Quota Share Data Summary, January 30, 1995.

Mr. Baird claims he is eligible for an additional 14,384 qualifying pounds of halibut QS. Mr. Baird's claim was denied because RAM's records did not show that additional landings were made from the F/V PENNY J during that period of time. RAM's landings records are based on state fish ticket information obtained from the State of Alaska Commercial Fisheries Commission.

Mr. Baird submitted twelve state fish tickets, a vessel log book for years 1983-1990, and tax records for 1984, 1987, and 1988, to prove his claim of additional landings from the F/V PENNEY J.⁵

DISCUSSION

To qualify for QS under the regulations of the IFQ program, as implemented by RAM, a person must have owned or leased a vessel that made legal landings during any QS qualifying year, 1988, 1989, or 1990.⁶ A qualified person's halibut QS is based on the person's highest total legal landings of halibut made in any five of the seven years during 1984-1990.⁷

Mr. Baird claims he is eligible for an additional 14,343 qualifying pounds of halibut. He has submitted state fish tickets, a log book, and tax records to prove his claim. Based on my comparison of the fish tickets with RAM's records, I find that Mr. Baird has already been issued QS for the landings noted on the fish tickets.

Mr. Baird's tax returns show the income derived (in part) from commercial fishing by Mr. Baird and Ms. Ripple, as partners in 1984, 1987, and 1988. The returns do not show the types of information that would be available from fish tickets: the weight of the fish, when the fish were harvested or landed, the type of gear used to harvest the fish, the name of the vessel used to harvest and land the fish, or the signature of the buyer or receiver of the fish. Consequently, there is no way to reliably determine from the returns whether the fish were harvested with fixed gear during a legal commercial opening or landed from a vessel owned or leased by Mr. Baird; or in fact, whether the fish were landed at all.

Mr. Baird's vessel log book is handwritten (presumably by Mr. Baird), and provides for the location of the harvest of the fish, and the number of pounds sold or kept for personal use by Mr. Baird in each of the halibut QS base years (1984-1990). The entries, however, are not verified by the buyer or receiver of the fish, nor are there specific dates of the landings of the fish. Consequently, there is no way to reliably determine from the log book whether the fish were legally harvested or in fact landed.

⁵The pounds listed in the log book approximate the numbers claimed on his application of QS.

⁶See, 50 C.F.R. § 679.40(a)(2); formerly 50 C.F.R. § 676.20(a)(1).

⁷See, 50 C.F.R. § 679.40(a)(4)(i); formerly 50 C.F.R. § 676.20(b).

Because Mr. Baird has already received QS for his fish tickets, and because the tax returns and log book are insufficient to show that Mr. Baird legally harvested and landed additional halibut, I conclude that Mr. Baird is not qualified to receive credit for an additional 14,343 qualifying pounds of halibut.

Because Mr. Baird's proof is inadequate, it is unnecessary to determine whether Mr. Baird's claimed landings were "legal" without state fish tickets for purposes of QS, or whether the evidence in lieu of state fish tickets may be used to prove the landings.

FINDINGS OF FACT

1. Mr. Baird was issued QS for the pounds of halibut noted on his state fish tickets.
2. Mr. Baird's best five years of halibut landings during the halibut QS base period were correctly determined by RAM to be 1984-1988.
3. Mr. Baird's state fish tickets, tax returns and log book do not show that he made additional qualifying landings of halibut.

CONCLUSIONS OF LAW

Mr. Baird is not eligible to receive credit for an additional 14,343 qualifying pounds of halibut.

DISPOSITION

RAM's IAD, denying Mr. Baird's application for 14,342 pounds of additional QS, is AFFIRMED. This Decision takes effect January 20, 1998, 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 the tenth day after the date of this Decision, December 29, 1997. A Motion for Reconsideration must 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. A timely Motion for Reconsideration will result in a stay of the effective date of the Decision pending a ruling on the motion or issuance of a Decision on Reconsideration.

Randall J. Moen

Appeals Officer

Appeal No. 95-0119
May 24, 1999