

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Applications of)	
)	Appeal No. 95-0122
ERIC R. WEBER,)	
Appellant)	
)	DECISION
and)	
)	
MARGARET T. KOCHUTEN,)	June 18, 1996
Respondent)	
_____)	

STATEMENT OF THE CASE

On July 24, 1995, Appellant Eric R. Weber filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on May 24, 1995. The IAD denied the Appellant's claim to halibut quota share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish on the grounds that he did not own the vessel in question, the F/V CHRISTIE ANN. The IAD found that the Respondent, Margaret T. Kochuten, had demonstrated that she was the sole owner of the F/V CHRISTIE ANN during the period February 8, 1984, through September 1989. The Division allocated qualifying pounds of halibut to the Respondent, but suspended its issuance pending exhaustion of the Appellant's administrative remedies.

The Respondent was joined as a party to this appeal on July 31, 1995. On August 19, 1995, the Appellant was directed to provide additional information to enable the Appeals Officer to determine whether a hearing was warranted. The Appellant was given until September 30, 1995, to respond, but he did not do so. The Appellant has adequately demonstrated that the IAD has a direct and adverse affect on his interests. The Appellant did not request a hearing and one was not ordered because the record contains sufficient information to resolve the issue in dispute without a hearing.

ISSUES

1. Whether the Appellant or the Respondent owned the F/V CHRISTIE ANN during February 8, 1984, through December 31, 1989.
2. Whether the Division may consider evidence not listed in 50 C.F.R. § 676.20(a)(1)(ii) to establish an applicant's ownership of a vessel.
3. Whether the failure to properly document a vessel with the U. S. Coast Guard renders landings from the vessel illegal under 50 C.F.R. § 676.20(a)(1).

BACKGROUND

On his Request for Application for Quota Share [RFA], the Appellant claimed ownership of the F/V CHRISTIE ANN, but did not list the vessel purchase date. The Division's official record showed that the Appellant was listed as the registered owner of the vessel with the Alaska Commercial Fisheries Entry Commission for the period February 8, 1984, through December 31, 1989. The Division sent the Appellant an application showing him as the sole owner of the vessel for that period. The Appellant signed the application without making any changes to the vessel information portion of the form, thereby swearing or affirming that he was the 100 percent owner of the F/V CHRISTIE ANN for the years in question. The completed application was received by the Division on July 13, 1994. The Appellant's claim of ownership of the F/V CHRISTIE ANN is the only basis upon which he could qualify for initial issuance of QS.

On her RFA, the Respondent listed herself as owner of the F/V CHRISTIE ANN and supplied a vessel purchase date of "6-1980." The Respondent subsequently submitted a notarized statement from her former husband, Victor Kochuten, stating that (1) he was the sole owner of the F/V CHRISTIE ANN until July 30, 1980, when the Respondent became the sole owner of the vessel as a result of their marriage dissolution; and (2) the Respondent remained the sole owner until the vessel was destroyed by fire in September 1989. The Respondent also submitted a photocopied account statement, which she states is from her account with Peter Pan Seafoods at False Pass, Alaska. The statement includes an entry for March 30, 1990, showing a credit of \$42,750 from "St. Paul Insurance." The Respondent states that this is evidence of "the paid premium for the loss of the Christie Ann." The record also contains a letter, submitted by the Respondent with her application and signed by Mr. William Bright, the plant manager of Peter Pan Seafoods in False Pass. In this letter, dated June 14, 1994, Mr. Bright states that the company's records show that the Respondent was the sole owner of the F/V CHRISTIE ANN in 1981; that he personally remembers that to be the case; and that the Respondent owned the vessel until it burned, which he believes was in 1990. Finally, the Respondent states that there is no official document explaining the transfer of ownership of the vessel from Victor Kochuten to her, but that "the cannery knew from 1980 forward who owned it, as did Marsh and McLennan, the insurance company it was covered under." [Kochuten letter, December 20, 1994] The Respondent qualified for halibut QS on the basis of her ownership of another vessel, the F/V SCORPION. The qualifying pounds at stake in this appeal are, for her, additional pounds.

Based on its consideration of all the above-mentioned evidence, the Division determined in its IAD that it was "far more probable than not" that Respondent was the owner of the vessel, and allocated to the Respondent the qualifying pounds resulting from landings made from the F/V CHRISTIE ANN. The Division, however, suspended issuance of QS, pending Appellant's exhaustion of all administrative remedies.

On July 24, 1995, Appellant appealed the IAD. Although asked by this Office for additional

information to support his claim, he provided none. On August 31, 1995, Respondent was joined in Appellant's appeal. This Office requested and received from the U.S. Coast Guard a copy of an abstract of title for the F/V CHRISTIE ANN, dated March 26, 1996. [Exhibit 1] The abstract shows that the Respondent was the sole owner of the vessel as of November 10, 1980, by virtue of a bill of sale from Victor Kochuten. The abstract also shows that, as of December 28, 1983, the vessel was placed "out of documentation" by the Coast Guard because the owner had not paid the required annual renewal after 1981. The vessel remained undocumented thereafter.

DISCUSSION

To qualify for an initial issuance of QS under the IFQ program, an applicant must first establish that he or she is a "qualified person" by virtue of having owned or leased a vessel that made legal landings of halibut or sablefish with fixed gear during a QS qualifying year, 1988-1990.¹ As the program has been implemented by the Division, a qualified person may receive credit only for landings that were made from a vessel owned or leased by the applicant at the time of the landings. Evidence of vessel ownership is limited to three types of documents, in order of priority: a U.S. Coast Guard abstract of title, a certificate of registration that is determinative of vessel ownership, and a bill of sale.² The best evidence of vessel ownership, if it exists, is a Coast Guard abstract of title. Absent any evidence that an abstract of title is erroneous or fraudulent, NMFS is required to accept that document as proof of ownership.³

The U.S. Coast Guard abstract of title for the F/V CHRISTIE ANN, certified on March 26, 1996, shows the Respondent as the sole owner of the vessel since November 10, 1980. There are no entries on the abstract after December 28, 1983, when the Coast Guard placed the vessel out of documentation. If ownership of the vessel changed hands after that date, it is not reflected on the abstract. The Appellant submitted no evidence in support of his appeal, let alone evidence that the abstract is erroneous or fraudulent. The only evidence in the record that supports the Appellant's claim is the State of Alaska vessel registration records supplied to the Division by the Alaska Commercial Fisheries Entry Commission [CFEC]. These records show the Appellant as the registered owner of the F/V CHRISTIE ANN for the period February 8, 1984, through December 31, 1989.

¹See 50 C.F.R. § 676.20(a)(1) and 676.20(a)(1)(i). An applicant who is a successor-in-interest to a qualified person may also receive an initial issuance of QS.

²See 50 C.F.R. § 676.20(a)(1)(ii).

³Prowler Partnership v. Samuelson, Appeal No. 95-0084, November 8, 1995, at 5; incorporated by reference in Prowler Partnership v. Samuelson, Decision on Reconsideration, March 12, 1996; *aff'd* March 14, 1996; *appeal pending*, Prowler Partnership v. National Marine Fisheries Service, Case No. A96126CIV (D.C. Alaska, complaint filed April 10, 1996).

The Alaska vessel registration is actually a vessel license. It is purchased annually and is required for delivering or landing fish or engaging in commercial fishing in the state. The registration is required to be completed by the vessel owner or the owner's authorized agent. In addition to other information, the name and address of the vessel owner must be filled in on the license application or renewal form. Alaska Stat. § 16.05.490 (1992); § 16.05.530 (1995); Alaska Admin. Code tit. 5, § 39.120(a) (July 1995). The CFEC does not require the person completing the application or renewal form to provide any evidence of vessel ownership or authority to act as the owner's agent. Ms. Christine L. Kelly, Licensing Project Leader for the CFEC, states that the commission does not consider, and never has considered, state vessel license records as establishing legal title or ownership. She states that the CFEC recognizes that the registration records are sometimes inaccurate or unreliable.⁴

Nonetheless, an Alaska vessel registration record does constitute a "certificate of registration that is determinative as to vessel ownership," as specified in 50 C.F.R. § 676.20(a)(1)(ii)(B). Alaska vessel registration records are "determinative" because they are some evidence of ownership,⁵ but they are not conclusive proof of ownership. In recognition of this fact, the Division accords Alaska vessel registration records a presumption of accuracy, in the absence of any evidence to the contrary. Where evidence is presented to the Division that contradicts or brings into question the accuracy of the ownership information found in the vessel registration records, the Division can refuse to accept the registration as proof of ownership.

Unlike CFEC's administration of vessel licensing, the United States Coast Guard requires evidence of vessel ownership before issuing a certificate of documentation and recording a transfer of ownership on a vessel's abstract of title. Under Coast Guard regulations, an applicant for documentation must present a sworn [or acknowledged] bill of sale signed by the seller and showing the name and address of the seller and the buyer, and the date of execution. 46 C.F.R. §§ 67.73; 67.75; 67.207; 67.220 (1995).⁶ These requirements have been in effect in substantially the same form since 1982. Because reliable proof of ownership is required to document a vessel, a Coast Guard abstract of title that is not shown to be erroneous or fraudulent is better evidence of vessel ownership than an Alaska vessel license. This fact is reflected in the superior position given to Coast Guard abstracts of title in the order of priority of documents specified in the IFQ regulation governing evidence of vessel ownership. 50 C.F.R. § 676.20(a)(1)(ii).

⁴Christine L. Kelly Memorandum, June 12, 1996.

⁵WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY defines "determinative" as "able, tending, or serving to determine."

⁶If the vessel has not been previously documented, a transfer of title may be evidenced by completing the transfer information on the builder's certification or the manufacturer's certificate, or by a bill of sale. 46 C.F.R. § 67.73 (1995).

Given that the abstract of title for the F/V CHRISTIE ANN, which has not been shown to be erroneous or fraudulent, shows that the Respondent was the sole owner as of November 10, 1980; that there is no better evidence in the record that the Appellant ever owned the vessel; and that other evidence submitted by the Respondent supports her claim of ownership, I find by a preponderance of the evidence that the Respondent was the sole owner of the F/V CHRISTIE ANN from November 10, 1980, until the vessel was destroyed by fire in 1989. I further find that the Alaska vessel registration records showing Appellant as the registered owner from February 8, 1984, through December 31, 1989, are in error, and that the Appellant never owned the F/V CHRISTIE ANN.

Limitations on evidence under 50 C.F.R. § 676.20(a)(1)(ii)-(v)

Federal regulation 50 C.F.R. § 676.20(a)(1)(ii)-(v) provides limitations on the types of evidence that the Division may consider when determining the existence of vessel ownership, a vessel lease, an ownership interest in a dissolved partnership or corporation, and legal landings. Section 676.20(a)(1)(ii) limits evidence of vessel ownership to U.S. Coast Guard abstracts of title, certificates of registration, and bills of sale. The IAD that is the subject of this appeal cited that section and stated that other evidence may not be considered in determining vessel ownership. The IAD further stated that "neither Ms. Kochuten nor Mr. Weber provided any of the three formal documents providing ownership as contemplated by the IFQ regulations . . ." [IAD at 4] Nonetheless, the Division did consider other evidence provided by the Respondent and determined that the evidence was sufficient to demonstrate that she owned the F/V CHRISTIE ANN during the period of time in question. In making that determination, the Division exceeded its authority under the regulation.

In the IAD, the Division stated that it is *possible* to construe the affidavit of Victor Kochuten (the vessel's former owner and the ex-husband of the Respondent) as notice of conveyance of the vessel from Mr. Kochuten to Ms. Kochuten. The Division did not specifically find that the affidavit was a bill of sale, and acknowledged that "the document may not be a 'Bill of Sale' as contemplated by the regulations . . ." [IAD at 4] The Division then proceeded to consider the affidavit, along with the letter from Peter Pan Seafoods, the insurance payment for loss of the vessel, and the Respondent's own statements, as evidence of the Respondent's ownership of the vessel. That was an improper use of the evidence by the Division. Evidence other than the three types of documents listed in 50 C.F.R. § 676.20(a)(1)(ii) may not be used by the Division to affirmatively establish a party's ownership of a vessel. Such evidence may, however, be used by the Division to challenge the validity or accuracy of any of the three types of documents listed in the regulation. The Division is not required to accept a listed document at face value if there is reason to believe it may be erroneous or fraudulent. Thus, the Division may use evidence not listed in the regulation as the basis for rejecting a claim of vessel ownership, but not as the basis for accepting a claim of vessel ownership.

In the instant appeal, the Division was acting properly within its discretion to reject the Appellant's claim

of vessel ownership because (1) the Appellant submitted no evidence in support of his claim; (2) the Alaska vessel registration records the Division already had in its possession are not always a reliable indicator of ownership; and (3) the evidence submitted to the Division by the Respondent was inconsistent with the vessel registration information. On the other hand, the Division had before it no evidence that it could consider to establish that the Respondent was the owner. Therefore, the appropriate determination by the Division should have been to deny both parties' claims of ownership.

On appeal, however, the limitations on evidence in 50 C.F.R. § 676.20(a)(1)(ii)-(v) do not apply. Appeals officers are governed by the different evidentiary standard of 50 C.F.R. § 676.25(j), which allows them to consider "all evidence that is relevant, material, reliable, and probative." This different and broader standard of evidence on appeal reflects the fact that the appeals process is better suited than the application process to make case-by-case factual determinations based on a wide variety of documents and other evidence, including oral testimony elicited at a hearing. During the application phase, it makes sense to limit evidence to specified types of documents in order to facilitate efficient processing of applications. Thus, the different evidentiary standards are appropriate to the separate functions of the Division and the Office of Administrative Appeals.

The view that the evidentiary limitations in 50 C.F.R. § 676.20(a)(1)(ii)-(v) apply only to the Division is consistent with and supported by the canon of interpretation that later-adopted rules supersede earlier-adopted rules to the extent they are in conflict. The appeals regulations, including the evidence standard under 50 C.F.R. § 676.25(j), were adopted after the evidence standard under 50 C.F.R. § 676.20(a)(1)(ii)-(v) was adopted.⁷ Limiting evidence on appeal, as provided under 50 C.F.R. § 676.20(a)(1)(ii)-(v), would contradict the broader standard of 50 C.F.R. § 676.25(j), which provides no exceptions to accommodate the restrictions of the § 676.20(a)(1)(ii)-(v). Therefore, the proper legal interpretation of these two provisions is that § 676.25(j) is not limited by § 676.20(a)(1)(ii)-(v).⁸

⁷The evidentiary limitations of 50 C.F.R. § 676.20(a)(1)(ii)-(v) were published November 9, 1993, and took effect January 1, 1994. 58 Fed. Reg. 59,375-59,376; 59,406 (1993). The evidentiary standard of 50 C.F.R. § 676.25(j) was published June 1, 1994, and took effect July 1, 1994. 59 Fed. Reg. 28,281; 28,284 (1994).

⁸The provisions of 50 C.F.R. § 676.20(a)(1)(iii) were amended and published August 24, 1994, and took effect September 23, 1994. 59 Fed. Reg. 43,502 (1994). The amendment broadens the evidence that may be submitted to show the existence of a vessel lease and establishes a conclusive presumption for written leases and affidavits signed by owner and lessee. The conclusiveness is binding on appeal, absent evidence that the lease or affidavit was invalid (void) *ab initio*. Treinen v. Scudder, Appeal No. 95-0104, October 11, 1995; *aff'd*, October 18, 1995.

Respondent's failure to comply with federal vessel documentation requirements

Federal regulation 50 C.F.R. § 676.20(a)(1)(v) provides, in relevant part, that

a "legal landing of halibut or sablefish" means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing.

Because the Division allocated qualifying pounds landed from the F/V CHRISTIE ANN to the Respondent, it is apparent that the Division found that the landings on which the allocation was based were legal landings. On appeal, this office obtained a U. S. Coast Guard abstract of title for the F/V CHRISTIE ANN, which the Division did not have before it when it issued the IAD. The abstract demonstrated to my satisfaction that the vessel was not properly documented with the Coast Guard and fishery endorsements were not kept current, as required under federal regulations, for the entire period of time during which the landings in question were made. This fact raises the question of whether the Respondent's failure to comply with federal vessel documentation regulations made the landings illegal. In other words, are U.S. Coast Guard vessel documentation regulations the sort of federal regulations that must be complied with for landings to be legal under 50 C.F.R. § 676.20(a)(1)(v)? The Division's determination that the landings from the F/V CHRISTIE ANN were legal landings must be revisited here in light of the new evidence that the Respondent did not comply with certain federal regulations in effect at the time of the landings.

The Division has interpreted the phrase "in compliance with state and Federal regulations" to mean compliance with regulations that govern the commercial harvest of groundfish, in particular, halibut and sablefish.⁹ The Division is free to adopt its own reasonable definitions of undefined terms that appear in regulations governing the IFQ program, which the Division is charged with administering.¹⁰ The Division's interpretation of the phrase in question is reasonable because it limits the scope of the phrase to state and federal regulations related to the activities covered by the halibut and sablefish IFQ program. In light of the Division's interpretation, I conclude that the definition of "legal landing" in 50 C.F.R. § 676.20(a)(1)(v) requires compliance only with regulations that governed commercial fishing in the federal Pacific halibut and sablefish fisheries in and off Alaska, and the landing of fish harvested from those fisheries. These include regulations specific to those fisheries, as well as general commercial fishing regulations applicable to participation in those fisheries.

⁹Initial Administrative Determination Re: Prowler Partnership and Gainhart Samuelson, April 5, 1995, at 17-19.

¹⁰Cadden v. Levenhagen and Pugh, Appeal No. 95-0013, January 17, 1996, at 6; *aff'd*, January 18, 1996.

Federal regulations requiring vessel documentation have remained substantially the same since 1982.¹¹ In 1984, the first year of halibut landings covered under the IFQ program, the vessel documentation requirement was found at 46 C.F.R. § 67.01-5 (1984), which provided:

Any vessel of at least 5 net tons which engages in the fisheries, Great Lakes trade, or coastwise trade, unless exempt under § 67.01-7, must be documented.

The fishery endorsement was, at that time, described at 46 C.F.R. § 67.17-9 (1984), which provided, in part:

(a) Subject to federal and state laws regulating the fisheries, a fishery license endorsement entitles the vessel to fish within the fishery conservation zone as defined in 16 U.S.C. 1811 and landward of that zone, and to land its catch, wherever caught, in the United States.

Federal regulation 46 C.F.R. § 67.23-1 (1984) provided that a Certificate of Documentation is valid for one year and, upon expiration, the owner must apply for renewal of the certificate.

¹¹In 1993, federal vessel documentation regulations were amended, but the requirements are substantially the same as during the period 1982 - 1993. The current federal regulation 46 C.F.R. § 67.7 (1995) provides:

Any vessel of at least five net tons which engages in the fisheries on the navigable waters of the United States or in the Exclusive Economic Zone, Great Lakes trade, or coastwise trade, unless exempt under § 67.9(c), must have a Certificate of Documentation bearing a valid endorsement appropriate for the activity in which engaged.

Fishery endorsements for the Certificate of Documentation are described at 46 C.F.R. § 67.21 (1995), which provides, in part:

(a) A fishery endorsement entitles a vessel to employment in the fisheries as defined in § 67.3, subject to Federal and State laws regulating the fisheries, and in any other employment for which a registry, coastwise, or Great Lakes endorsement is not required. A fishery endorsement entitles a vessel to land its catch, wherever caught, in the United States.

Federal regulation 46 C.F.R. § 67.163 (1995) provides, in part, that endorsements on Certificates of Documentation are valid for one year. The owner of a vessel that is required to be documented must apply for renewal of the endorsement before the previous year's endorsement expires.

On their face, these federal regulations appear to meet the standard for inclusion in the definition of "legal landing" under 50 C.F.R. § 676.20(a)(1)(v). That is, they appear to govern commercial fishing in the federal Pacific halibut and sablefish fisheries in and off Alaska, and the landing of fish harvested from those fisheries, and they were in effect at the time of the landings (1984-1989). Before deciding whether these regulations are actually included in the definition of legal landing, several factors need to be considered and are, therefore, discussed below.

1. *Federal vessel documentation requirements do not pertain exclusively to commercial fishing vessels.* All commercial vessels of five net tons capacity or more engaged in commercial activities in federal waters must be documented. Documentation is required for cruise ships, oil tankers, and freighters, as well as commercial fishing vessels. Documentation is not required for commercial fishing vessels under five net tons capacity.

2. *Neither the United States Coast Guard nor NMFS nor the State of Alaska verify compliance with federal vessel documentation requirements as a condition to landing fish that was harvested in fisheries covered by this IFQ program.*

3. *The Division does not check for or require compliance with federal vessel documentation regulations when determining whether landings are legal under this IFQ program.*

4. *Compliance with federal vessel documentation regulations is not, per se, a condition for lawfully harvesting fish in the fisheries governed by this IFQ program.* By contrast, a copy of the vessel's U.S. Coast Guard Certificate of Documentation must be supplied to obtain a federal vessel license, which is required for fishing in certain federally regulated fisheries, such as the South Pacific Tuna Fisheries. See 50 C.F.R. § 282.3 (1995). Likewise, the State of Alaska requires an Alaska vessel license as a condition to delivery or landing fish in Alaska, or engaging in commercial fishing in the state. Alaska Stat. § 16.05.490 (1992). It is unlawful to take, attempt to take, or possess unprocessed fish aboard a vessel in Alaska waters unless the vessel is registered with the state. Alaska Admin. Code tit. 5, § 39.120(a) (July 1995).

5. *The Division does not award QS under this IFQ program based on landings in Alaska made from vessels that were not registered with the State of Alaska at the time of the landings.*

6. *The State of Alaska regulations on vessel registration and licensing are located in the title of the administrative code relating to fish and game, and are administered by the CFEC, a state agency dealing exclusively with commercial fishing matters.* By contrast, the federal vessel documentation regulations are located not in Title 50 (Wildlife and Fisheries) of the C.F.R., but in Title 46 (Shipping), and are administered by the U. S. Coast Guard, not NMFS.

Under the federal vessel documentation regulations, possession of a current federal certificate of

documentation and fishery endorsement is required for engaging in commercial fishing in waters under federal jurisdiction. The fishery endorsement entitles a vessel to land its catch in the United States. Nonetheless, for all the reasons stated above in paragraphs numbered 1-6, I conclude that the federal vessel documentation regulations are not federal regulations covered by the definition of "legal landings" in 50 C.F.R. § 676.20(a)(1)(v). I further conclude that the Respondent's failure to comply with federal vessel documentation regulations during the period 1984 through 1989 does not render landings made from the F/V CHRISTIE ANN during that period of time illegal landings for purposes of this IFQ program.

FINDINGS OF FACT

1. The Respondent was the sole owner of the F/V CHRISTIE ANN from November 10, 1980, until the vessel was destroyed by fire in 1989.
2. The Alaska vessel registration records showing Appellant as the registered owner from February 8, 1984, through December 31, 1989, are in error. The Appellant never owned the F/V CHRISTIE ANN.

CONCLUSIONS OF LAW

1. The Division is not required to accept a document listed in 50 C.F.R. § 676.20(a)(1)(ii) at face value if there is reason to believe it may be erroneous or fraudulent. The Division may use evidence not listed in the regulation as the basis for rejecting a claim of vessel ownership, but not as the basis for accepting a claim of vessel ownership.
2. The limitations on evidence that may be submitted or considered under 50 C.F.R. § 676.20(a)(1)(ii)-(v) do not apply on appeal. Appeals officers are governed by the different evidentiary standard of 50 C.F.R. § 676.25(j).
3. The definition of "legal landing" in 50 C.F.R. § 676.20(a)(1)(v) requires compliance only with regulations that govern commercial fishing in the federal Pacific halibut and sablefish fisheries in and off Alaska, and the landing of fish harvested from those fisheries. These include regulations specific to those fisheries, as well as general commercial fishing regulations applicable to participation in those fisheries.
4. The federal vessel documentation regulations are not federal regulations covered by the definition of "legal landings" in 50 C.F.R. § 676.20(a)(1)(v).

5. The Respondent's failure to comply with federal vessel documentation regulations during the period 1984 through 1989 does not render landings made from the F/V CHRISTIE ANN during that period of time illegal landings for purposes of this IFQ program.

DISPOSITION

The Division's Initial Administrative Determination, dated May 24, 1995, which denied the Appellant's application for halibut QS and allocated certain qualifying pounds of halibut to Respondent, is **AFFIRMED** on the grounds stated in this decision. This decision takes effect on July 18, 1996, unless by that date the Regional Director orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 10 days after the date of this decision [June 28, 1996]. Because the prevailing party in this appeal still has an opportunity to receive QS and the corresponding IFQ for the 1996 fishing season, I recommend that the Regional Director expedite review of this decision and, if there is no substantial disagreement with it, promptly affirm the decision and thereby give it an immediate effective date.

Edward H. Hein
Chief Appeals Officer