

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0130
)
MARCO T. SPEZIALY,) DECISION
Appellant)
_____) January 26, 1999

STATEMENT OF THE CASE

Appellant Marco Spezialy filed a timely appeal of an Initial Administrative Determination [IAD] issued on June 14, 1995 by the Restricted Access Management [RAM] program.¹ The IAD denied Mr. Spezialy's application for additional halibut quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program because he did not have state fish tickets for his claimed landings. Mr. Spezialy 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. Spezialy make legal landings of halibut that qualify him for additional QS?

BACKGROUND

Mr. Spezialy was issued QS, based on 10,956 pounds of halibut. He claims he made additional landings of 6,436 pounds of halibut. To prove that he made the additional landings, he submitted a one-page printout, summarizing his landings in pounds and dates during 1985-1989. He also submitted four pages of photocopied information, which he claims are vessel log entries for his landings. Although ordered to do so, Mr. Spezialy never produced state fish tickets or federal catch reports for his claimed additional landings. RAM does not have a record of any of his additional landings.

DISCUSSION

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

²*See*, 50 C.F.R. § 679.43(g); formerly 50 C.F.R. § 676.25(g)(2) and (3). 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.

Under the IFQ program, as implemented by RAM, to receive credit for additional qualifying pounds of halibut, a qualified person, as defined in 50 C.F.R. § 679.40(a)(2), must have owned or leased the vessel from which the halibut was legally landed and at the time of the landing. To be legally landed, the halibut must have been harvested with fixed gear and landed in compliance with state and federal regulations in effect at the time of the landing.³ Evidence of a legal landing is limited to state fish tickets and federal catch reports.⁴

In several cases,⁵ we have held that state fish tickets and federal catch reports are the only evidence that can be used as proof of legal landings for purposes of initial issuance of QS. There is no evidence in the record that Mr. Spezialy's claimed additional landings were recorded on state fish tickets or federal catch reports. Thus, I find that he did not record the claimed landings on state fish tickets or federal catch reports. Consequently, I conclude that he is not qualified for an initial issuance of additional QS based on these claimed landings.

FINDING OF FACT

Mr. Spezialy did not record his claimed additional landings of halibut on state fish tickets or federal catch reports.

CONCLUSIONS OF LAW

1. State fish tickets and federal catch reports are the only evidence that can be used to prove legal landings of halibut and sablefish.
2. Mr. Spezialy is not qualified for an initial issuance of additional QS based on the landings he claimed in this appeal.

DISPOSITION

RAM's IAD denying Mr. Spezialy's application for additional QS is **AFFIRMED**. This decision takes effect February 25, 1999, unless by that date the Regional Administrator orders the review of the decision.

³See, 50 C.F.R. § 679.40(a)(3)(v)(A).

⁴See, 50 C.F.R. § 679.40(a)(3)(v)(B).

⁵See, Sonya Corazza, Appeal No. 95-0026, September 30, 1998, and Jack C. Kvale, Appeal No. 95-0103, September 30, 1998.

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 February 5, 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.

Randall J. Moen
Appeals Officer