

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0068
)
WARDS COVE PACKING CO.,) DECISION
Appellant)
) June 8, 2000
)
_____)

STATEMENT OF THE CASE

Appellant Wards Cove Packing Company (Wards Cove) filed an appeal of an Initial Administrative Determination (IAD) issued by the Restricted Access Management Program¹ (RAM) on March 20, 1995. We accepted the appeal as timely filed.² The IAD denied Wards Cove's application for sablefish quota share (QS) under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because Wards Cove failed to show that it qualified for sablefish QS. We did not order an oral hearing because the record contains sufficient information upon which to reach a final decision, and because there is no genuine and substantial issue of adjudicative fact for resolution.³

ISSUE

Is Wards Cove entitled to sablefish QS based on its purchase of the F/V GREAT PACIFIC in 1991?

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

²Federal regulation 50 C.F.R. § 679.43(d) provides for filing an appeal within 60 days after the date of the IAD. The deadline for filing an appeal in this case was May 19, 1995. The Wards Cove employee who filed Wards Cove's Request for Application [RFA] for QS died. On at least three occasions between March 20, 1995, and May 19, 1995, the Ward's Cove employee who took over the handling the RFA contacted RAM to question the denial of Wards Cove's application for sablefish QS. When the president of Wards Cove realized that the deadline for appeal had passed, he promptly wrote to RAM, seeking to appeal the IAD. RAM received that letter on June 26, 1995. Because of the contacts made by Wards Cove to RAM during the appeal period, and because of the possible confusion from the death of the original employee handling the application, we accepted the appeal as timely.

³See 50 C.F.R. § 679.43(g), formerly 50 C.F.R. § 676.25(g)(3). All IFQ regulations were renumbered effective July 1, 1996. See 61 Fed. Reg. 31,270 (1996). However, there were no substantive changes material to this appeal.

PRINCIPLES OF LAW

The regulations of the IFQ program provide that in order to qualify for QS, a person must have owned or leased a commercial fishing vessel that made legal landings of halibut or sablefish during the QS qualifying period (1988, 1989, or 1990). The regulations state in relevant part:

(a) Initial allocation of QS

(1) General. The Regional Administrator shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories.⁴

(2) Qualified person

(I) As used in this section, a "qualified person" means a "person," as defined in § 679.2:

(A) That owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year.⁵

(3) Qualification for QS

(I) Year. A QS qualifying year is 1988, 1989, or 1990.⁶

DISCUSSION

Wards Cove maintains that it became a "qualified person" for sablefish QS when it purchased the F/V GREAT PACIFIC in 1991.⁷ Wards Cove did not own or lease the vessel at the time the vessel made legal landings of sablefish during the QS qualifying period (1988, 1989, or 1990).⁸

⁴50 C. F. R. § 679.40(a)(1).

⁵50 C.F.R. § 679.40(a)(2)(I)(A).

⁶50 C.F.R. § 679.40(a)(3)(I).

⁷The official U.S. Coast Guard abstract of title shows that Great Pacific Fish Co., Inc., owned the F/V GREAT PACIFIC from 1979 until October 3, 1991, when it sold the vessel to "Aleutian Dragon Fisheries, an Alaska Joint Venture." A few minutes later on that same day, Aleutian Dragon Fisheries sold the vessel to the Great Pacific Limited Partnership, which consisted of Dall Head, Inc., as general partner, and Western Alaska Fisheries, Inc., as limited partner. Wards Cove submitted documentation that shows it is a majority shareholder of Dall Head, Inc.

⁸RAM's records show that it awarded initial sablefish QS to the Great Pacific Limited Partnership based on the sablefish landings made from the F/V GREAT PACIFIC. Whether the QS was properly awarded to Great Pacific Limited Partnership is not before us at this time, and its resolution is not material to this decision because Wards Cove did not acquire an interest in the partnership until after the

Wards Cove reads the IFQ regulations to require that a person need only own or lease a vessel that made legal landings of sablefish or halibut during the QS qualifying period (1988, 1989, or 1990), in order to qualify for QS. RAM interprets the regulations to require that a person must have owned or leased a vessel *at the time* the qualifying landings were made.

The history of the IFQ regulations shows an intent on the part of the North Pacific Fishery Management Council [Council] to award QS to qualified persons on the basis of both the ownership of, and the landings made from, a vessel during the QS qualifying period.⁹ Because an agency has the inherent right to reasonably interpret its own regulations, and because RAM's interpretation conforms with the express intent of the Council, I conclude that Wards Cove is not entitled to sablefish QS based on its purchase of the F/V GREAT PACIFIC in 1991.

I note that Wards Cove would also not qualify for sablefish QS on the basis that it acquired the fishing history of the F/V GREAT PACIFIC with the vessel's purchase in 1991.¹⁰ We have ruled in several IFQ decisions that rights to QS cannot be acquired with the transfer or sale of a vessel, and that those rights may not be assigned by private agreement.¹¹ Those rulings were based on the language of the IFQ regulations, which provide that QS may be issued or assigned only to qualified *persons*, not *vessels*, and that only RAM, not private persons, has the authority to issue or assign QS.

FINDING OF FACT

Wards Cove did not own or lease the F/V GREAT PACIFIC at the time that legal landings of sablefish were made from the vessel during the QS qualifying years.

CONCLUSION OF LAW

QS qualifying period.

⁹See the NMFS Final Environmental Impact Statement to the IFQ program, September 15, 1992, at 2-22.

¹⁰Wards Cove submitted a July 7, 1994, document signed by principals of Aleutian Dragon Fisheries, which states that the parties meant to transfer all potential fishing rights at the time the vessel was sold to Wards Cove in 1991. Conspicuously absent are documents from the Great Pacific Fish Co., Inc., the entity which actually owned the vessel during the QS qualifying years.

¹¹Prowler Partnership v. Samuelson, Decision on Reconsideration (Part I), Appeal No. 95-0084, March 12, 1996, *aff'd* March 14, 1996; *see also* Cadden v. Levenhagen and Pugh, Appeal No. 95-0013, January 17, 1996, *aff'd* January 18, 1996; Alwert Fisheries Inc. v. Oregon Seafood Producers and Dorothy L. Painter, Appeal No. 95-0073, March 21, 1996, *aff'd* March 27, 1996; Silver Ice Fisheries Partnership v. Arctic Select Seafoods, Inc., Appeal No. 95-0114, October 30, 1996, *aff'd* November 12, 1996.

Wards Cove is not entitled to sablefish QS based on its purchase of the F/V GREAT PACIFIC in 1991.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This decision takes effect on July 10, 2000, 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, June 19, 2000. A Motion for Reconsideration must be 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.

Randall J. Moen
Appeals Officer