

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0110
)
STEPHAN CARVALHO,) DECISION
Appellant)
_____) May 16, 2000

STATEMENT OF THE CASE

Appellant Stephan Carvalho filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program [RAM] on May 3, 1995. The IAD denied Mr. Carvalho's request to have his halibut quota share [QS] reassigned from vessel category C to vessel category B under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program. RAM denied Mr. Carvalho's request because its records showed that he landed halibut from both a category B vessel and a category C vessel in 1988 during his "most recent year of participation" for fishing halibut or sablefish under the IFQ program. Mr. Carvalho's interests are directly and adversely affected by the IAD. We denied Mr. Carvalho's request for a hearing because the facts are not in dispute.¹

ISSUE

Is Mr. Carvalho entitled to have his halibut QS reassigned from vessel category C to vessel category B?

BACKGROUND

In 1988, Mr. Carvalho owned, and landed halibut and sablefish from, a category B vessel (F/V PIONEER), and leased, and landed halibut from, a category C vessel (F/V LUCKY ISLAND). RAM's Official Record shows that 1988 was Mr. Carvalho's "most recent year of participation" for fishing halibut and sablefish.

RAM assigned Mr. Carvalho's halibut QS to vessel categories B and C in proportion to the halibut landings made from the two vessels in 1988.² A QS assignment to vessel category B enables an IFQ

¹See 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). The wording of the regulation in question was unchanged by the renumbering.

²RAM assigned all of Mr. Carvalho's sablefish QS to vessel category B. Mr. Carvalho did not appeal the assignment.

cardholder to commercially fish halibut or sablefish on a vessel of any size.³ A QS assignment to vessel category C enables an IFQ cardholder to commercially fish halibut or sablefish aboard a vessel of 60 ft. or less.⁴

On appeal, Mr. Carvalho asks that his halibut QS be reassigned from vessel category C to vessel category B.⁵ Mr. Carvalho claims that the proportionate assignment of his halibut QS to vessel categories B and C reduces his ability to commercially fish for halibut. He also claims that his halibut QS for areas 3B, 4A, 4B, 4C, and 4D should not have been assigned to vessel category C because he never used a "C" category vessel to harvest halibut in those areas.

PRINCIPLES OF LAW

Under the regulations of the IFQ program, as implemented by RAM, a person's QS is assigned to the vessel category in accordance with the length of the vessel (or vessels) used and the product type landed in the person's most recent year of participation. A person's "most recent year of participation" is the person's last year of fishing of any groundfish or halibut during 1988, 1989, 1990, or 1991, before September 26, 1991. The governing regulation reads:⁶

Assignment of QS to vessel categories. Each qualified person's QS will be assigned to a vessel category based on the length overall of vessel(s) from which that person made fixed gear legal landings of groundfish or halibut in the most recent year of participation and the product type landed. As used in this paragraph, "most recent year of participation" means the most recent year of four calendar years in which any groundfish or halibut were harvested using fixed gear, as follows: Calendar years 1988, 1989, or 1990; or calendar year 1991 prior to September 26, 1991.

The IFQ regulations specify that when vessels of different vessel categories are used in a person's last year of fishing (between January 1, 1988 and September 26, 1991), the person's QS must be assigned to the vessel categories in proportion to the landings of halibut or sablefish made from those vessels. The governing regulation reads:⁷

³See 50 C.F.R. § 679.40(a)(5)(ii)(B).

⁴See 50 C.F.R. § 679.40(a)(5)(ii)(C).

⁵Mr. Carvalho did not appeal the assignment of his sablefish. RAM assigned all of his sablefish QS to vessel category B.

⁶See 50 C.F.R. § 679.40(a)(5)(I).

⁷See 50 C.F.R. § 679.40(a)(5)(iii)(C).

A qualified person's QS will be assigned to each applicable vessel category in proportion to the landings of halibut or sablefish made by that person, if at any time during their most recent year of participation, that person used more than one vessel in different categories.

DISCUSSION

The IFQ regulations provide for a person's QS to be assigned to vessel categories based on the length of vessels used and the product type landed in the person's last year of fishing for halibut and sablefish between January 1, 1988 and September 26, 1991. The IFQ regulations do not provide for QS to be assigned to vessel categories according to commercial feasibility or areas fished during the QS qualifying or base years (or at any other time).

The evidence shows that 1988 was Mr. Carvalho's last year of fishing for halibut or sablefish during the period of January 1, 1988 through September 25, 1991. Because he used a category B vessel and a category C vessel to land halibut during his last year of fishing, I conclude that RAM properly assigned Mr. Carvalho's halibut QS to those vessel categories. Therefore, Mr. Carvalho's halibut QS cannot be reassigned from vessel category C to vessel category B.

FINDINGS OF FACT

1. Mr. Carvalho's last year of fishing for halibut or sablefish between January 1, 1988 and September 25, 1991, was 1988.
2. Mr. Carvalho used a category B vessel and a category C vessel to land halibut in 1988.

CONCLUSIONS OF LAW

1. The IFQ regulations do not provide for QS to be assigned to vessel categories according to commercial feasibility or areas fished during the QS base years (or at any other time).
2. RAM properly assigned Mr. Carvalho's halibut QS to vessel categories B and C because Mr. Carvalho used a category B vessel and a category C vessel to land halibut during his last year of fishing.
3. Mr. Carvalho's halibut QS cannot be re-assigned from vessel category C to vessel category B.

DISPOSITION

RAM's IAD, which denied Mr. Carvalho's request to have his halibut QS reassigned from vessel category C to vessel category B, is **AFFIRMED**. This decision takes effect on June 15, 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 Standard Time, on the tenth day after the date of this Decision, May 26, 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 of points and authorities in support of the motion.

Randall J. Moen
Appeals Officer