### NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION OFFICE OF ADMINISTRATIVE APPEALS

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In re Application of

MICHAEL L. SATHER, Appellant

Appeal No. 95-0134

DECISION

January 26, 1999

## STATEMENT OF THE CASE

Appellant Michael Sather filed a timely appeal of an Initial Administrative Determination [IAD] issued on June 29, 1995, by the Restricted Access Management [RAM] program<sup>1</sup>. The IAD denied Mr. Sather's claim for additional qualifying pounds of halibut under the Individual Fishing Quota [IFQ] program on the grounds that there was no acceptable evidence that the halibut was legally landed. Mr. Sather did not request a hearing. 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.<sup>2</sup>

### ISSUE

Did RAM properly deny Mr. Sather's claim to IFQ credit for additional qualifying pounds of halibut?

### BACKGROUND

Mr. Sather claims credit for additional qualifying pounds of halibut based on two landings he says were made from his vessel, the F/V SHOWGIRL, in Everett, Washington, totaling 9,686 pounds. He claims he transported and sold the fish to Ocean Pride Seafoods, Inc., a Seattle wholesale distributor, on May 9, 1986, and June 5, 1986. RAM has no record of these landings. Mr. Sather acknowledges that state fish tickets were not prepared or issued for these landings. In lieu of fish tickets, Mr. Sather produced an affidavit, invoices, and copies of checks from Ocean Pride Seafoods to prove that the fish were legally landed.

<sup>&</sup>lt;sup>1</sup>The Restricted Access Management Division was renamed Restricted Access Management program, effective September 28, 1997. [NOAA Circular 97-09, 19 Sep 97].

<sup>&</sup>lt;sup>2</sup>See, 50 C.F.R. § 679.43(g), formerly 50 C.F.R. § 676.25(g)(3)(iii). All IFQ regulations were renumbered, effective July 1, 1996. *See*, 61 Fed. Reg. 31,270 (1996). The wording of the regulation was unchanged by the renumbering.

### DISCUSSION

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.<sup>3</sup> Evidence of a legal landing is limited to state fish tickets and federal catch reports.<sup>4</sup>

In several cases,<sup>5</sup> we have ruled that state fish tickets and federal catch reports are the only evidence that can be used as proof of legal landings. Mr. Sather concedes that the landings in question were not recorded on state fish tickets or federal catch reports. Thus, his evidence of the landings is insufficient and unacceptable under the IFQ regulations. Consequently, I conclude that RAM properly denied IFQ credit for the halibut landings Mr. Sather here claims.

In addition, I presume that under Washington state law or regulations the landings should have been reported on Washington state fish tickets. If that presumption is correct, then the failure to report means that the landings were not in compliance with state regulations in effect at the time of the landing and, therefore, do not meet the definition of "legal landing" in our regulations. If, in fact, that is the case, then this would form a separate and additional basis for denying IFQ credit for the landings in question.

#### FINDING OF FACT

Mr. Sather 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 under the IFQ program.

2. The evidence of the landings in question is insufficient and unacceptable under the IFQ regulations.

<sup>4</sup>See, 50 C.F.R. § 679.40(a)(3)(v)(B).

<sup>5</sup>See, e.g., <u>Sonya Corazza</u>, Appeal No. 95-0026, September 30, 1998, and <u>Jack C. Kvale</u>, Appeal No. 95-0103, September 30, 1998.

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<sup>&</sup>lt;sup>3</sup>See, 50 C.F.R. § 679.40(a)(3)(v)(A).

3. RAM properly denied IFQ credit for the halibut landings Mr. Sather here claims.

# DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect on February 25, 1999, 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 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.

Edward H. Hein Chief Appeals Officer