

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0021
)
SYLVESTER F. REBISCHKE,) DECISION
Appellant)
_____) September 2, 1998

STATEMENT OF THE CASE

Appellant Sylvester Rebeschke filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on March 20, 1995. The IAD denied his application for halibut quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program because there was no evidence that he had made any halibut landings during the QS qualifying years (1988, 1989, or 1990). Mr. Rebeschke's interests are directly and adversely affected by the IAD. No hearing was held because the relevant facts are not in dispute.

ISSUE

Whether Mr. Rebeschke can qualify for QS on the basis of landings never made during the QS qualifying period because of inclement weather.

BACKGROUND

Mr. Rebeschke claimed on his application for QS that he landed a total of 2,000 pounds of halibut from his 21-foot fishing vessel during the period of 1972-1994. Mr. Rebeschke did not specify the years in which he made the landings. RAM denied Mr. Rebeschke's application because the official record showed that his vessel made no landings during the QS qualifying years.

On appeal, Mr. Rebeschke admits that he did not fish at all during the QS qualifying period, but estimates that he would have landed 2,000 pounds of halibut had it not been for inclement weather.

DISCUSSION

To qualify for QS under the IFQ program, a person must have made legal landings of halibut or sablefish from a vessel owned or leased by that person during a QS qualifying year.²

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

²See 50 C.F.R. 679.40(a)(2), formerly 50 C.F.R. § 676.20(a)(1).

Despite Mr. Rebischke's admission that he did not fish or make landings during the QS qualifying period, he asks for QS based on the landings he believes he would have made but for inclement weather.

This Office has ruled that the IFQ regulations require QS to be based on actual, not hypothetical, landings.³ There are no exceptions to this rule, nor am I empowered to create one. The North Pacific Fishery Management Council in 1994 rejected a proposal to create a "hardship" exception to this rule. An Appeals Officer is bound by the duly promulgated regulations of the IFQ program. Consequently, I conclude that Mr. Rebischke is not eligible for QS, in spite of his unfortunate circumstance, because the record shows he made no landings during any of the QS qualifying years.

FINDING OF FACT

Mr. Rebischke did not fish or make landings during the QS qualifying years.

CONCLUSION OF LAW

Mr. Rebischke cannot qualify for QS based on landings he might have made but for inclement weather.

DISPOSITION

The IAD, which denied Mr. Rebischke's application for halibut QS because of the absence of landings during the QS qualifying years, is **AFFIRMED**. This Decision takes effect on October 2, 1998, 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 by this Office not later than 4:30 p.m., Alaska Time, on the tenth day after the date of this Decision, September 14, 1998. 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

³See, e.g., Kenneth M. Adams, Appeal No. 95-0004, March 22, 1995, *aff'd* April 19, 1995; and William E. Crump, Appeal No. 95-0024, June 27, 1995, *aff'd* July 27, 1995.