

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
)
JAMES H. JENKIN,)
Appellant)
)
_____)
Appeal No. 95-0093
DECISION
December 17, 1998

STATEMENT OF THE CASE

Appellant James Jenkin filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on April 18, 1995. The IAD denied his application for Quota Share [QS] for an additional 403 qualifying pounds of halibut under the Individual Fishing Quota [IFQ] program because of insufficient evidence. Mr. Jenkin's interests are directly and adversely affected by the IAD. Mr. Jenkin's request for a hearing was denied because there are no facts in dispute.²

ISSUE

Whether Mr. Jenkin can receive IFQ credit for an additional 403 qualifying pounds of halibut that he claims were landed from .

BACKGROUND

RAM sent Mr. Jenkin a 3-part Application for halibut QS showing that he was eligible for QS, based on landings of 2,556 total qualifying pounds of halibut in area 3A. Mr. Jenkin amended the application and claimed 3,399 total qualifying pounds of halibut. As proof of his claim, he submitted state fish tickets showing landings of halibut made from the F/V DETTA D in 1984 and 1987. The state fish tickets showed landings of halibut, totaling 440 pounds. Mr. Jenkin did not submit any other evidence of landings.

RAM, thereafter, sent Mr. Jenkin a letter requesting evidence of his ownership of the vessel prior to

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(9)(3)(1); formerly 50 C.F.R. § 676.20(a)(1)(i). All IFQ regulations were renumbered, effective July 1, 1996. See, 61 Fed. Reg. 31,270 (1996). The wording of the regulations in question was unchanged by the renumbering.

1988. Mr. Jenkin submitted a copy of a bill of sale for the vessel. RAM accepted the bill of sale and the state fish tickets as evidence of QS, and awarded Mr. Jenkin QS, based on landings of 2,996 qualifying pounds of halibut. This amount represented the original 2,556 pounds displayed on the application, plus the 440 pounds evidenced by the fish tickets for 1984 and 1987. RAM issued an IAD that denied Mr. Jenkin credit for the additional 403 pounds of halibut that he claimed on his application.

On appeal, Mr. Jenkin claims that he should receive credit for the landings of 403 qualifying pounds of halibut. He produced no evidence to support his claim, even though he was ordered to do so by this Office on July 2, 1996.

DISCUSSION

To qualify for QS under the regulations of the IFQ program, a person must have owned or leased a vessel that made legal landings of halibut and sablefish during a QS qualifying year (1988, 1989, 1990).³ Halibut QS is calculated according to the qualified person's total best five of seven years of legal landings of halibut during 1984-1990.⁴

Mr. Jenkin was awarded QS, based on landings of 2,996 pounds of halibut that were verified by RAM records and the fish ticket that he submitted. Although Mr. Jenkin claims that his award of QS should have included landings of an additional 403 qualifying pounds of halibut, he has not produced any evidence to support this claim, nor is there any evidence of these landings in the record. Therefore, I must conclude that he is not eligible to receive IFQ credit for the additional halibut landings he claims.

FINDING OF FACT

There is no evidence in the record that landings of an additional 403 qualifying pounds of halibut were made from a vessel owned or leased by Mr. Jenkin.

CONCLUSION OF LAW

Mr. Jenkin is not eligible to receive IFQ credit for additional halibut landings.

DISPOSITION

³See, 50 C.F.R. § 679.40(a)(2).

⁴Formerly, 50 C.F.R. § 676.20(b).

The IAD denying Mr. Jenkin's claim of an additional 403 qualifying pounds of halibut is AFFIRMED. This decision takes effect on January 19, 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 December 28, 1998, 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.

James C. Hornaday
Appeals Officer

Randall J. Moen
Appeals Officer