

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0103
)
JACK C. KVALE,) DECISION
Appellant)
)
September 30, 1998
_____)

STATEMENT OF THE CASE

Appellant Jack Kvale filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on January 5, 1995. The IAD denied Mr. Kvale's claim for halibut quota share [QS] under the Pacific Halibut and sablefish Individual Fishing Quota [IFQ] program because of the absence of proof that he made legal landings of halibut during a QS qualifying year (1988, 1989, or 1990). Mr. Kvale's interests are directly and adversely affected by the IAD. A hearing was not held because the record contains sufficient information on which to reach a final judgment, and because there is no genuine and substantial issue of adjudicative fact for resolution.²

ISSUE

Did Mr. Kvale make legal landings of halibut that qualify him for QS?

BACKGROUND

RAM's records show that Mr. Kvale owned the F/V SCAMP between December 27, 1983, and December 31, 1985, and the F/V TWEETY BIRD between December 27, 1983, and December 31, 1991. Mr. Kvale's application for halibut QS was denied because RAM has no record that any legal landings of halibut were made from those vessels during that period.

On appeal, Mr. Kvale claims that legal landings of halibut were made from the vessels during the QS

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. § 679.43(g)(2) and (3); formerly, 50 C.F.R. § 676.20(g)(2) and (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.

qualifying period. He admits that the fish were not sold, but were eaten or given away.³ Mr. Kvale never claimed, nor did he produce any proof,⁴ that any of his landings were recorded on state fish tickets or federal catch reports.

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 or sablefish during a QS qualifying year.⁵ A "legal landing" means halibut or sablefish harvested with fixed gear and landed in compliance with state and federal regulations in effect at the time of the landing.⁶ Evidence of legal landings is limited to state fish tickets and federal catch reports.⁷

The IFQ regulations provide that state fish tickets and federal catch reports are the only evidence that can be used to prove legal landings of halibut and sablefish.⁸ There is no evidence in the record that Mr. Kvale's claimed landings were recorded on state fish tickets or federal catch reports. I find that Mr. Kvale did not record his claimed landings of halibut on state fish tickets or federal catch reports. There being no evidence in the record that Mr. Kvale made legal landings of halibut or sablefish during the QS qualifying years, I conclude that he is not qualified for QS.

³See, Mr. Kvale's handwritten reply of July 22, 1996, at the bottom of the Order to Produce Evidence, July 8, 1996,

⁴See, the Order to Produce Evidence, July 8, 1996.

⁵See, 50 C.F.R. § 679.40(a)(2).

⁶See, 50 C.F.R. § 679.40(a)(3)(v)(A).

⁷See, 50 C.F.R. § 679.40(a)(3)(v)(B), which states in relevant part: "Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of halibut or sablefish harvested, the IPHC regulatory area or groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting. State catch reports are Alaska, Washington, Oregon, or California fish tickets. ..." See also, the regulatory history of 50 C.F.R. § 679.40(a)(3)(v)(B) in 58 Fed. Reg. 59375, 59382 (11/9/93), which states in relevant part: "Other types of documents that report landings of fish will not be considered evidence of legal landings for purposes of initial allocation of QS."

⁸See, Sonya Corazza, Appeal No. 95-0026, September 30, 1998. Nonetheless, we do not exclude the possibility that an appellant, having established that fish tickets or weekly catch reports had been properly completed and submitted but subsequently lost or destroyed, could use other evidence to prove the information that was originally on the fish tickets or catch reports.

FINDING OF FACT

Mr. Kvale did not record his claimed 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.
2. Mr. Kvale made no legal landings of halibut or sablefish during the QS qualifying years.
3. Mr. Kvale is not qualified for QS.

DISPOSITION

The IAD, that denied Mr. Kvale's eligibility for halibut QS under the IFQ program, is **AFFIRMED**. This Decision takes effect on October 30, 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 at this Office, not later than 4:30 p.m., Alaska Time, on October 13, 1998, the tenth day after the date of this Decision. 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 this motion.

Randall J. Moen
Appeals Officer