

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0112
)
VASILY V. KUZMIN,) DECISION
Appellant)
_____) December 4, 1997

STATEMENT OF THE CASE

Appellant Vasily Kuzmin filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on May 3, 1995. The IAD denied Mr. Kuzmin's request to have all of his halibut quota share [QS] assigned to vessel category "D" under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program because he had used both "C" and "D" category size vessels to harvest his halibut during his last year of fishing in 1991. Mr. Kuzmin has adequately shown that his interest at the time of the filing of his appeal is directly and adversely affected by the IAD. Since the filing of his appeal his interest is no longer adversely affected by the IAD because of a recently promulgated "fish down" IFQ amendment which, in effect, allows halibut QS assigned to vessel category C to be used on a vessel category D vessel.² No hearing was ordered because the facts are not in dispute.

ISSUE

Whether all of Mr. Kuzmin's halibut QS may be assigned to vessel category "D."

BACKGROUND

Mr. Kuzmin was issued halibut QS and sablefish QS. In his last year of fishing, 1991,³ he landed halibut from three vessels that he owned: the F/V VARAG, a "C" category vessel (between 60 ft. and 35 ft.), and the F/V BRISTOL and the F/V SONIC, both category "D" vessels (35 feet or less). RAM proportionately assigned Mr. Kuzmin's halibut QS to vessel categories "C" and "D."

On appeal, Mr. Kuzmin asks that all of his halibut QS be assigned to vessel category "D" because of the costs of changing fishing gear for both category "C" and "D" vessels.

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

²See, 61 Fed. Reg. 43312, August 22, 1996.

³Prior to September 26 of that year.

DISCUSSION

Under the regulations of the IFQ program, a person's QS is assigned to the vessel category associated with the length of the vessel or vessels used to make legal landings of halibut or sablefish in the person's last year of fishing during the period January 1, 1988, to September 26, 1991. If the person used more than one vessel in different vessel categories during the person's last year of fishing, the person's QS is assigned to each vessel category in proportion to the landings of halibut or sablefish made by that person.⁴ Halibut QS, derived from vessels 35 ft. or less, is assigned to vessel category "D";⁵ and sablefish QS, derived from vessels 60 feet or less, is assigned to vessel category "C."⁶ Halibut QS assigned to vessel category "C" may be used on a vessel 60 ft. or less (which, by definition, includes a category "D" vessel).⁷

Mr. Kuzmin used three vessels to harvest halibut in vessel categories "C" and "D" in 1991, his last year of fishing for IFQ purposes. Because he used more than one vessel in different categories in that year, I conclude that RAM correctly proportionately assigned his halibut QS to those vessel categories.

Mr. Kuzmin asks that all of his halibut QS be assigned to vessel category "D." Given that the IFQ regulations now allow for halibut QS assigned to vessel category "C" to be used on a vessel of 60 ft. or less,⁸ I conclude that a reassignment to vessel category "D," even if it were possible, is unnecessary because the regulations authorize Mr. Kuzmin to use his assigned halibut QS on a category "D" vessel.

CONCLUSION OF LAW

1. Mr. Kuzmin's halibut QS was correctly assigned on a proportionate basis to vessel categories "C" and "D."
2. Mr. Kuzmin may use all of his assigned halibut QS on a category "D" size vessel.

⁴See, 50 C.F.R. § 679.40(a)(5)(iii)(C); formerly 50 C.F.R. § 676.20(c)(6).

⁵See, 50 C.F.R. § 679.40(a)(5)(v)(B); formerly, 50 C.F.R. § 676.20(c)(5).

⁶See, 50 C.F.R. § 679.40(a)(5)(iv)(A); formerly, 50 C.F.R. § 676.20(c)(3).

⁷See, 50 C.F.R. § 679.40(a)(5)(ii)(C), formerly, 50 C.F.R. § 676.20(a)(2)(iii); and 50 C.F.R. § 679.42(a), formerly, 50 C.F.R. § 676.22(a). See also, 61 Fed. Reg. 43312, August 22, 1996, which explains the history of the recent "fish down" amendment.

⁸Id.

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DISPOSITION

RAM's IAD, which proportionately assigned Mr. Kuzmin's halibut QS to vessel categories "C" and "D" is AFFIRMED. This Decision takes effect on January 5, 1998, unless by that time 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, December 15, 1997. 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 Officers, and must be accompanied by a written statement or points or authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the Decision pending a ruling on the motion or the issuance of the Decision on Reconsideration.

Randall J. Moen
Appeals Officer