

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF THE REGIONAL DIRECTOR

In Re Application of ) Appeal No. 95-0115  
 )  
LEONARD LEACH, ) DECISION ON REVIEW  
 Appellant )  
 )  
 ) AFFIRMED

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On May 10, 1995, the Restricted Access Division (RAM), National Marine Fisheries Service (NMFS), issued an *Initial Administrative Decision (IAD)* which denied the application of Appellant Leonard Leach for additional quota share (QS) under the Pacific halibut and sablefish Individual Fishing Quota (IFQ) program, for halibut on board the F/V TRISH when the vessel was lost at sea on June 22, 1988.

Appellant filed a timely appeal of the *IAD* pursuant to the provisions of 50 C.F.R. 676.25(o). By its *Decision*, dated May 6, 1998, the Office of Administrative Appeals (OAA) affirmed the *IAD* and dismissed appellant's appeal, holding that the halibut could not be credited towards QS because it was not "landed" within the meaning of 50 C.F.R. 679.40(a)(3)(v)(A). On May 22, 1998, Appellant filed a Motion for Reconsideration with the OAA. On August 3, 1998, the OAA issued a *Order Denying Request for Reconsideration*.

Pursuant to the provisions of 50 C.F.R. 676.25(o), I hereby AFFIRM both the *Decision* and the *Order Denying Request for Reconsideration* of the OAA affirming the *IAD* issued in this matter, for the reasons set forth therein, effective as of this date.


In addition, I affirm the decisions below because appellant fails to meet the evidentiary requirements of 50 C.F.R. 679.40.(a)(3)(v)(B), which requires in pertinent part:

**Documentation. 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. Federal catch reports are WPRs required under [section] 679.5....(emphasis added).

Although appellant has supported his Request for Reconsideration with a State of Alaska fish ticket, it is one created a decade after the sinking of the vessel. The fish tickets and, for at sea processors, Weekly Production Reports contemplated in the regulation, above, are fish tickets and WPRs which were filed contemporaneously with the landing. This was made clear in the preamble to the final IFQ regulations published in the Federal Register:

...evidence of legal landings, for initial QS calculation purposes, is specifically limited to state and Federal catch reports at [section] 676.20(a)(1)(v).<sup>1</sup> Text is added to this paragraph to clearly specify that a state catch report is an Alaska, Washington, Oregon, or California **fish ticket that has been submitted** in compliance with regulations of the respective state that were in effect **at the time of landing**. A Federal catch report is described as a **weekly production report submitted** in compliance with 50 CFR 672.5(c) or 675.5(c) **at the time of landing**. **Other types of documents that report landings of fish will not be considered evidence of legal landings for purposes of initial allocation of QS.** (Emphasis added).

58 Fed. Reg. 59375, 59382 (11/9/93). The reason for requiring that initial allocation of QS under the program be documented exclusively by contemporaneously filed fish tickets and WPRs is that such documents are self-authenticating.

  
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Steven Pennoyer  
Regional Administrator  
Alaska Region

8/31/98  
\_\_\_\_\_  
Date

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<sup>1</sup> The IFQ regulations have been reorganized and renumbered since their initial publication. 50 C.F.R. 676.20(a)(1)(v) is now numbered 50 C.F.R. 679.40(a)(3)(v)(B).