

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 02-0004
	)	
GIACOMO MOCK	)	DECISION
Appellant	)	
	)	February 23, 2004
_____	)	

STATEMENT OF THE CASE

The Restricted Access Management Program [RAM] issued an Initial Administrative Determination [IAD] that denied Giacomo Mock's Application for a Transfer Eligibility Certificate [TEC] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish. Mr. Mock has timely appealed the IAD.<sup>1</sup> Mr. Mock can appeal the IAD because it directly and adversely affects his interests.<sup>2</sup> An oral hearing is not necessary in this case because the record on appeal contains sufficient information on which to reach a final decision.<sup>3</sup>

ISSUE

Does Giacomo Mock qualify for a TEC as an "IFQ crew member" under 50 C.F.R. §679.2?

SUMMARY

The IAD is vacated. On appeal, Giacomo Mock has submitted sufficient evidence that supports his claim that he has worked for more than 150 days as a member of the harvesting crew of four vessels: the F/V FLAVIA, the F/V LEWIS and CLARK, the F/V USHEGAT, and the F/V KITTIWAKE. Because he meets the definition of an IFQ crew member, he is entitled to a TEC.

ANALYSIS

Giacomo Mock must obtain a TEC before he can purchase quota shares (QS) under the IFQ program, or have them transferred to him, because he was not initially issued QS. To be eligible for a TEC,<sup>4</sup> Mr. Mock must meet the definition of "IFQ crew member" by showing that he spent at least 150 days performing work "directly related to the catching and retaining of fish."

"IFQ crew member" includes any individual who has worked at least 150 days experience

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<sup>1</sup>Mr. Mock's brother, Joey, has also filed an identical timely appeal, No. 02-0005.

<sup>2</sup>50 C.F.R. § 679.43(b).

<sup>3</sup>50 C.F.R. § 679.42(m)(4).

<sup>4</sup>50 C.F.R. § 679.41(d)(6)(i).

working as part of the harvesting crew in any United States commercial fishery. For purposes of this definition, “harvesting” means work that is directly related to the catching and retaining of fish. Work in support of harvesting, but not directly involved with harvesting, is not considered harvesting crew work. For example, searching for fish, work on a fishing vessel only as an engineer or cook, or work preparing a vessel for a fishing trip would not be considered work of a harvesting crew.<sup>5</sup>

In Karen N. Boyce,<sup>6</sup> we ruled that the failure to be licensed as a crew member does not prohibit an applicant from obtaining a TEC if the applicant has proved the minimum 150 days experience as part of a harvesting crew in any fishery in the United States. Therefore, Mr. Mock does not have to prove that he was a properly licensed IFQ crew member to obtain a TEC in this case.

When Mr. Mock originally applied for a TEC,<sup>7</sup> he claimed that he had harvested Pacific cod and salmon as owner and operator of the F/V LEWIS and CLARK for “all year for the past three years” between November 1999 and January 18, 2002. He claimed that his harvesting duties included, “running jig machines, pulling pots, troll[ing], and tendering salmon.” Mr. Mock also claimed that he had “continuously” harvested Pacific cod, lingcod, and salmon for “300 days” during that same period, as co-owner and co-operator of the F/V FLAVIA.

RAM asked Mr. Mock to provide the *actual* days he had spent harvesting fish,<sup>8</sup> but he did not do so. RAM denied his application based on insufficient evidence.<sup>9</sup>

John Dupier, Mr. Mock’s authorized agent, has filed a revised application for a TEC on behalf of Mr. Mock, that details the actual number of days and the specific duties performed by Mr. Mock, while harvesting fish aboard four vessels either owned or operated by himself, or by one or more family members: David Martinsen, Mr. Mock’s father; Flavia Mock, Mr. Mock’s mother; and Joey Mock, Mr. Mock’s brother. The revised application states that Mr. Mock:

- spent 80 days baiting hooks, setting longline, hauling back longline and bleeding fish aboard the F/V FLAVIA between April 1, 2000, and July 28, 2000, while harvesting Pacific cod with longline gear in the waters off Kodiak, Alaska;
- spent 20 days repairing pots, dumping pots, baiting pots, coiling lines during haul back, and bleeding fish aboard the F/V LEWIS and CLARK between September 15, 2000, and

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<sup>5</sup>Definition of “IFQ crew member” at 50 C.F.R. § 679.2.

<sup>6</sup>Appeal No. 01-0023, August 6, 2003.

<sup>7</sup>Application for QS/IFQ Transfer Eligibility Certificate, January 18, 2002.

<sup>8</sup>Letter to Mr. Mock from Clydina Bailey (RAM), January 25, 2002.

<sup>9</sup>IAD.

October 30, 2000, while harvesting Pacific cod with pot gear in the waters of Cook Inlet, Alaska;

- spent 72 days repairing pots, dumping pots, baiting pots, coiling lines during haul back, and bleeding fish aboard the F/V USHEGAT and the F/V KITTIWAKE between September 20, 2000, and April 28, 2001, while harvesting Pacific cod with pot gear in the waters of Cook Inlet;

- spent 70 days repairing pots, coiling lines, dumping pots, baiting pots, and bleeding fish aboard the F/V KITTIWAKE between September, 2001, and April 2002, while harvesting Pacific cod with pot gear in the waters of Cook Inlet, Alaska;

- spent 3 days repairing gear, setting gear, gutting and icing fish, baiting hooks, and hauling back gear aboard the F/V USHEGAT between April 21, 2002, and April 23, 2002, while harvesting Pacific halibut with longline gear in the waters of Prince William Sound, Alaska.<sup>10</sup>

Vessel documentation records for the United States Coast Guard (USCG) confirm that the four vessels were owned by at least one of Mr. Mock's four family members during the time periods listed on his revised application.

Deep Creek Custom Packing, Inc., (DCCP) and David Martinsen have submitted letters <sup>11</sup> that support Mr. Mock's account of his work history.

Mr. Mock's revised application provides that he spent 245 days aboard one of four family owned vessels, running jig machines, trolling, baiting hooks, setting longline, hauling back gear, bleeding fish, gutting and icing fish, pulling pots, coiling lines, dumping pots, and baiting pots. Those tasks are directly related to the catching and retaining of fish. I find that the work described constitutes harvesting work crew experience.

The IFQ regulations do not suggest how Mr. Mock might prove how many days he has been a crew member. The captain and crew of vessels participating in the Alaska Pacific cod and halibut fisheries are not required to record the number of days they spend working in those fisheries. Therefore, it would be unreasonable to require that Mr. Mock document each day he actually spent working as an IFQ crew member. It is reasonable, however, to require that he produce some form of documentation to show that he worked as a crew member when he claims he did. Mr. Mock has met that expectation. I find that Mr. Mock has at least 150 days' experience

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<sup>10</sup>The revised application also states that Mr. Mock spent 100 days tendering salmon aboard the F/V LEWIS and CLARK and the F/V BENT NAIL. However, the "tendering" of fish, which is essentially the transporting of fish, would not be considered the "harvesting" of fish, for purposes of qualifying for a TEC.

<sup>11</sup>See the facsimiles to this Office on behalf of DCCP and Mr. Martinsen, dated January 20, 2004.

working as part of the harvesting crew aboard four vessels: the F/V FLAVIA, the F/V LEWIS and CLARK, the F/V USHEGAT, and the F/V KITTIWAKE.

In RAM's view,<sup>12</sup> the purpose of the 150 days' experience requirement is to "separate real fishermen from casual, part-time, participants" and to make sure that individuals holding QS can safely operate vessels and gear in the professional longline fisheries. I am satisfied that Mr. Mock has sufficient experience to meet the goals identified by RAM. I conclude that he is therefore an IFQ crew member and is entitled to a TEC.

#### FINDING OF FACT

Giacomo Mock has at least 150 days experience working as part of the harvesting crew aboard four vessels: the F/V FLAVIA, the F/V LEWIS and CLARK, the F/V USHEGAT, and the F/V KITTIWAKE.

#### CONCLUSION OF LAW

Giacomo Mock is an IFQ crew member and is entitled to a Transfer Eligibility Certificate.

#### DISPOSITION AND ORDER

The IAD that is the subject of this appeal is VACATED. RAM is ordered to issue Giacomo Mock a Transfer Eligibility Certificate. This Decision takes effect March 24, 2004, unless by that date the Regional Administrator orders review of this Decision.

The Appellant or 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 this Decision, March 4, 2004. 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.

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Randall J. Moen  
Appeals Officer

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<sup>12</sup>See, the IAD at 3, n. 1, in Karen N. Boyce, Appeal No. 01-0023, August 6, 2003.

