

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0026
)
SONYA CORAZZA,) DECISION
Appellant)
_____) September 30, 1998

STATEMENT OF THE CASE

Appellant Sonya Corazza filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on January 5, 1995. Her application for halibut quota share [QS] under the Individual Fishing Quota [IFQ] program was denied because of insufficient evidence of legal landings of halibut in a QS qualifying year (1988, 1989, or 1990). Ms. Corazza's interests are directly and adversely affected by the IAD. No hearing was ordered because the record contains sufficient information on which to reach a final decision, and because there is no genuine and substantial issue of adjudicative fact for resolution.²

ISSUE

Did Ms. Corazza make legal landings of halibut that qualify her for QS?

BACKGROUND

RAM's records show that Ms. Corazza owned the F/V MALAMUTE KID from 1983-1991. Her application for QS was denied because RAM's records did not show that halibut landings were made from the vessel during any of the QS qualifying years, 1988 - 1990.

In her appeal,³ Ms. Corazza claims that she caught and landed six halibut with fixed gear from the F/V MALAMUTE KID near the Chugach Islands in IFQ area 3A during the commercial halibut opener of June 12-13, 1989. She was using the vessel during that time to participate in clean-up operations for the EXXON VALDEZ oil spill. She admits that the landings were not recorded on a state fish ticket,

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. § 676.25(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.

³See, Ms. Corazza's statement in her appeal of March 23, 1995.

but claims that none was required because she gave the fish away to family and crew for personal consumption, and because it was not "common practice" in 1989 to record halibut caught for personal use on a state fish ticket. She produced a copy of the 1993 Annual Report of the International Pacific Halibut Commission [IPHC] as proof that vessel owners and operators were not required to record personal-use halibut landings on state fish tickets. Page 15 of the Report reads in part:

This year for the first time, a vessel operator was required to record in the logbook, within 24 hours, any halibut taken home for personal consumption -- whether by the skipper, the crew, or anyone else.

She states in her affidavit that her EXXON VALDEZ oil spill clean up activities prevented her from leaving the area to sell the fish.

Ms. Corazza also submitted the affidavit of her husband, Richard Corazza,⁴ and a videotape purported to show the landing of the halibut in question. Mr. Corazza states that the halibut were caught and transferred to town by an EXXON Corporation helicopter for personal consumption. Ms. Corazza did not submit evidence of any other landings during the QS qualifying period.

DISCUSSION

To qualify for QS under the regulations of the IFQ program, a person must have owned or leased a vessel, from which legal landings of halibut or sablefish were made during a QS qualifying year (1988, 1989, or 1990).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 federal regulations in effect in 1989 required the owner or operator of a vessel to maintain a copy of the state fish tickets (for at least two years) for fish delivered to someone other than a commercial

⁴See, Mr. Richard Corazza's statement of April 8, 1995.

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 requires in pertinent 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. ..."

fish processor or primary fish buyer.⁸

RAM does not have a record of the landings of halibut claimed by Ms. Corazza, and she admits that the landings were not recorded on state fish tickets. Thus, I find that Ms. Corazza's claimed landings of halibut were not recorded on state fish tickets.

The IFQ regulations provide that state fish tickets and federal catch reports are the only evidence that may be used to prove legal landings of halibut and sablefish.⁹ Ms. Corazza has produced neither, and she acknowledges that none were ever completed for the landing in question. Consequently, she does not have legal proof that she made the claimed landings. In the absence of that proof, I conclude that Ms. Corazza did not make legal landings of halibut that qualify her for QS. Therefore, she is not qualified for QS .

Even if, for the sake of argument, Ms. Corazza gave her fish away to family and crew, she would have been required under federal law to maintain a record of the harvest and landing of the fish on a state fish ticket. Because this was not done, her claimed landings would not have been "legal landings" for IFQ purposes. Ms. Corazza cites the 1993 IPHC Report as proof that she did not have to record the landings on a state fish ticket. Ms. Corazza is incorrect. The Report provides only that 1993 is the first time that halibut landings were to be recorded *in a vessel log book*.

FINDING OF FACT

Ms. Corazza did not record her claimed landings of halibut on a state fish ticket or federal catch report.

CONCLUSIONS OF LAW

1. State fish tickets and federal catch reports are the only evidence that may be used to prove legal landings of halibut and sablefish.
2. Ms. Corazza did not make legal landings of halibut that qualify her for QS.
3. Ms. Corazza is not a qualified person, and is not eligible for QS.

⁸See, 50 C.F.R. § 301.15(b), (d), and (f).

⁹The regulatory history of the requirement that only state fish tickets or federal catch reports can be used as proof of legal landings provides 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." See, 58 Fed. Reg. 59375, 59382 (11/9/93).

4. If Ms. Corazza gave her fish away to family and crew, she would have been required under federal law to maintain a record of the harvest and landing of the fish on a state fish ticket, and because this was not done, her claimed landings would not have been "legal landings" for IFQ purposes.

DISPOSITION

RAM's IAD, denying Ms. Corazza'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 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 this motion.

Randall J. Moen
Appeals Officer