

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0037
)
DENNIS DEEVER,) DECISION
Appellant)
_____) November 14, 2000

STATEMENT OF THE CASE

Appellant Dennis Deaver filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management [RAM]¹ program on March 6, 1995. The IAD denied Mr. Deaver's claim for additional sablefish quota share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish. The IAD also denied Mr. Deaver's request re-assign his halibut QS (for IFQ regulatory areas 3B and 4A) from vessel category C to vessel category B. The IAD did not address Mr. Deaver's request to re-assign his sablefish QS from vessel category C to vessel category B. Mr. Deaver's interests are directly and adversely affected by the IAD. We did not order an oral hearing 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. 50 C.F.R. § 679.43(g)(2) and (3).²

In this Decision, I conclude that Mr. Deaver may not be issued additional sablefish QS, and that his halibut QS and sablefish QS may not be re-assigned to vessel category B.

ISSUES

1. Is Mr. Deaver entitled to receive additional sablefish QS (based on a sablefish landing from the F/V PACIFIC SUN in 1989 that was not recorded on a state fish ticket)?
2. Is Mr. Deaver entitled to have his halibut QS and sablefish QS re-assigned from vessel category C to vessel category B?

DISCUSSION

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

²Formerly 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.

1. Is Mr. Deaver entitled to receive additional sablefish QS (based on a sablefish landing from the F/V PACIFIC SUN in 1989 that was not recorded on a state fish ticket)?

Under the IFQ regulations, only legal landings of halibut or sablefish qualify for QS. 50 C.F.R. § 679.40(a)(2). Evidence of a "legal landing" is limited to state fish tickets or federal catch reports. 50 C.F.R. § 679.40(a)(3)(v)(B).³

On June 6, 1989, the F/V PACIFIC SUN delivered 11,253 pounds of sablefish at All Alaskan Seafoods, Inc., [All Alaskan] in Kodiak, Alaska. All Alaskan weighed the fish, and recorded the weight of the fish on a company processing report. All Alaskan did not buy the sablefish because the fish was contaminated with diesel fuel. RAM has no official record of the landing of the sablefish. Nor does the appeals record contain a copy of a state fish ticket or a federal catch report for the landing. All Alaskan's plant manager, Mr. Timothy Blott, acknowledged that the processor did not prepare a fish ticket for the delivery.⁴ Nor does the Appellant claim that one was ever prepared.

Mr. Deaver claims that he should not be held responsible for All Alaskan's failure to prepare a fish ticket for the delivery, and that other evidence in lieu of a state fish ticket shows that the F/V PACIFIC SUN legally landed the sablefish.⁵

In Leonard Leach,⁶ the regional administrator of NMFS ruled that evidence of a legal landing is limited to state fish tickets or federal catch reports prepared at the time of landing of the fish. In several decisions,⁷ we have also ruled that evidence in lieu of a state fish ticket or a federal catch report may not be used as evidence of a legal landing, unless it is first established that a fish ticket or a federal catch report was prepared and submitted to the state, but subsequently lost or destroyed.

³The regulation 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. Federal catch reports are weekly production reports under [section] 679.5...."

⁴See the March 29, 1990, statement of Mr. Blott.

⁵See, the May 15, 1997, letter from Mr. Deaver's attorney, Joseph Sullivan.

⁶Appeal No. 95-0115, Decision on Review, August 31, 1998.

⁷See, e.g., Norman E. Mapes, Appeal No. 95-0113, Decision on Reconsideration, September 15, 1998, at 2; Jack C. Kvale, Appeal No. 95-0103, September 30, 1998; Sonya Corazza, Appeal No. 95-0026, September 30, 1998; and Delbert L. Ferrier, Appeal No. 96-0004, February 1, 1999.

The evidence in the record does not show that anyone recorded the June 6, 1989, delivery of the fish from the F/V PACIFIC SUN on a fish ticket (or a federal catch report). Therefore, the delivery is not a “legal landing” for purposes of issuance of QS. Consequently, Mr. Deaver is not entitled to additional sablefish QS in this case.⁸

2. Is Mr. Deaver entitled to have his sablefish QS and his halibut QS re-assigned from vessel category C to vessel category B?

Under the regulations of the IFQ program, as implemented by RAM, a person's QS will be assigned to a vessel category based on the length overall (LOA)⁹ of the vessels used to make legal landings of halibut or sablefish in the person's “most recent year of participation.”¹⁰ If vessels of different categories were used during that year, a person's QS will be assigned to each vessel category in proportion to the percentage of halibut or sablefish landings made in the person's “most recent year of participation.”¹¹ A person's “most recent year of participation” is the person's last year of fishing of any groundfish or halibut during 1988, 1989, 1990, or 1991, before September 26, 1991.¹² An assignment of QS to vessel category “B” authorizes an IFQ cardholder to fish an IFQ species on a vessel of any length.¹³ An assignment of QS to vessel category “C” authorizes the IFQ cardholder to fish an IFQ species of 60 ft. or less.¹⁴

Mr. Deaver owned two vessels, the F/V HIGH HOPES and the F/V PACIFIC SUN, which landed halibut during the QS qualifying period¹⁵ (before September 26 in 1991). The F/V PACIFIC SUN

⁸If Mr. Deaver had complied with the federal groundfish regulations, by reporting the delivery to the State of Alaska on documentation equivalent to a state fish ticket, I would have allowed the equivalent documentation to be used as evidence of a legal landing for purposes of QS.

⁹The “LOA” of a vessel is defined in 50 C.F.R. § 679.2 (Definitions).

¹⁰See 50 C.F.R. § 679.40(a)(5)(i).

¹¹See 50 C.F.R. § 679.40(a)(5)(iii)(C), which provides: “A qualified person's QS will be assigned to each applicable vessel category in proportion to the landings of halibut or sablefish made by that person if, at any time, during their most recent year of participation, that person used more than one vessel in different categories.”

¹²See 50 C.F.R. § 679.40(a)(5)(i).

¹³See 50 C.F.R. § 679.40(a)(5)(ii)(B).

¹⁴See 50 C.F.R. § 679.40(a)(5)(ii)(C).

¹⁵The QS qualifying period is 1988, 1989, or 1990.

also landed sablefish in 1989. The F/V HIGH HOPES is a category “C” vessel, and the F/V PACIFIC SUN is a category “B” vessel, for purposes of assignment of QS to a vessel category.

RAM proportionately assigned Mr. Deaver’s sablefish QS and halibut QS (for IFQ regulatory areas 3A, 3B, and 4A) to vessel categories C and B, based on the percentage of total halibut landings made from each of the two vessels in 1991.

On appeal, Mr. Deaver asks that all of his sablefish QS and that all of his halibut QS (for IFQ regulatory areas 3B and 4A) be re-assigned from vessel category C to vessel category B. Mr. Deaver claims that the small amount of QS assigned to vessel category C is not commercially feasible.

The evidence in the record shows that Mr. Deaver owned and used the F/V HIGH HOPES and the F/V PACIFIC SUN to fish and land Pacific halibut in 1991, his “most recent year of participation” in the halibut or sablefish fishery. Because the F/V HIGH HOPES is a category “C” vessel, and the F/V PACIFIC SUN, is a category “B” vessel, Mr. Deaver’s halibut QS and sablefish QS must be proportionately assigned to those vessel categories in accordance with the total landings of halibut made from each vessel in his last year of fishing, 1991. The IFQ regulations do not provide for an exception to this rule, even if a vessel category assignment is not commercially feasible. Consequently, Mr. Deaver is not entitled to have all of his sablefish QS and halibut QS re-assigned from vessel category C to vessel category B.

FINDINGS OF FACT

1. No one recorded the June 6, 1989, delivery of sablefish from the F/V PACIFIC SUN on a state fish ticket or (a federal catch report).
2. Mr. Deaver owned and used the F/V HIGH HOPES and the F/V PACIFIC SUN to fish and land Pacific halibut in 1991.
3. The F/V HIGH HOPES is a category “C” vessel, and the F/V PACIFIC SUN is a category “B” vessel.

CONCLUSIONS OF LAW

1. The F/V PACIFIC SUN did not make a legal landing of sablefish on June 6, 1989.
2. Mr. Deaver is not entitled to receive additional sablefish QS for the delivery of sablefish from the F/V PACIFIC SUN on June 6, 1989.
3. Mr. Deaver’s most recent year of participation is 1991, for purposes of assigning his halibut QS and sablefish QS to vessel categories.

4. Mr. Deaver's halibut QS and sablefish QS must be proportionately assigned to vessel categories "B" and "C" because he used two vessels of categories "B" and "C" to fish halibut in his most recent year of participation. The IFQ regulations do not provide an exception to this rule, even if a vessel category assignment is not commercially feasible.

5. Mr. Deaver is not entitled to have all of his sablefish QS, and to have all of his halibut QS for IFQ regulatory areas 3B and 4A, re-assigned from vessel category C to vessel category B.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. Mr. Deaver is also not entitled to have all of his sablefish QS re-assigned from vessel category C to vessel category B. This decision takes effect on December 14, 2000, 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 the tenth day after the date of this Decision, November 24, 2000. 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 of points and authorities in support of the motion.

Randall J. Moen
Appeals Officer