

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 95-0038  
)  
DONALD H. SKUSE, ) DECISION  
Appellant )  
\_\_\_\_\_ ) September 1, 1998

STATEMENT OF THE CASE

Appellant Donald Skuse filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program<sup>1</sup> [RAM] on May 3, 1995. The IAD denied Mr. Skuse's application for additional halibut quota share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because of a lack of evidence that the fish were legally landed. An oral hearing was held before Appeals Officer James C. Hornaday on July 8, 1996. Mr. Skuse, Ivan Sjokin, and Andrew Heckle testified in person. Trooper Steve Stanton, Peter LeMay, Steve Brazier, Brent Skuse, William Sheldon, and Lynda Brazier, Mr. Skuse's wife, testified by telephone. Mr. Skuse's interests are adversely and directly affected by the IAD.

ISSUES

1. Whether Mr. Skuse made legal landings of halibut that qualify him for additional QS, in the absence of state fish tickets.
2. Whether Mr. Skuse can receive additional QS, based on his partnership with Mr. Doug Parish, the owner of the F/V GERLIN.

BACKGROUND

Mr. Skuse claims additional QS, based on landings of halibut made from at least three vessels<sup>2</sup> -- the

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

<sup>2</sup>It is unclear from Mr. Skuse's application and appeal as to what vessels made the claimed landings.

F/V RAINMAKER,<sup>3</sup> the F/V GOLDEN URCHIN,<sup>4</sup> and an unnamed vessel [ADF&G no. 53615]<sup>5</sup> -- during the years of 1984-1990, except 1989 (because of the EXXON VALDEZ oil spill).

Mr. Skuse has submitted no state fish tickets for the landings made from the vessels, nor does RAM have a record of the landings. Mr. Skuse claims that one-half of the landings were sold to canneries and recorded on state fish tickets, but that the fish tickets were lost or destroyed. He claims that the other half of landings, for which there never were fish tickets, were sold on the street.

In lieu of state fish tickets, Mr. Skuse submitted (1) his federal tax returns [Schedule C], which show gross sales<sup>6</sup> from commercial fishing; and (2) a statement from Dagnet Fisheries, Inc, which listed the price paid per pound for halibut during 1985-1990. The statement of Dagnet Fisheries, Inc., does not mention whether purchases of halibut [or any fish] were made from Mr. Skuse during that period, or whether the landings of the fish were recorded on state fish tickets. Mr. Skuse writes:<sup>7</sup>

...Because the canneries and cash buyers were unable to furnish appropriate fish tickets, I relied on my I.R.S. [sic] 1040 returns to establish the pounds caught. I did this by taking gross sales and divided it by price per pound for the year claimed ... . I feel this is reliable halibut is the only fish I have fished for except for the year 1989 in which I harvested Sea Urchins and because of the Exxon Oil Spill I did not fish for halibut. ...

The affidavit of Lynda Brazier (Mr. Skuse's wife, and owner of the vessel) attests to (1) Mr. Skuse's lease of the F/V RAINMAKER from 1983-1988; (2) the sale of Mr. Skuse's fish to Dagnet Fisheries, Inc., Keener Packing, and other cash buyers; (3) the seizure of Mr. Skuse's records by the Alaska State Troopers; and (4) the validity of the gross sales listed on Mr. Skuse's federal tax returns.

Mr. Skuse's former crew, Ivan Sjodin, Andrew Heckle, Steven Brazier, Brent Skuse, William Sheldon, and wife, Lynda Brazier, testified to Mr. Skuse's street and cannery sales. Mr. Skuse's tax preparer, Peter LeMay, testified that the amounts listed as "gross sales" on Mr. Skuse's tax returns were based

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<sup>3</sup>According to an affidavit signed by Lynda Brazier, the vessel was leased to Mr. Skuse by Lynda Brazier for January 1983 through December 1988.

<sup>4</sup>RAM's records show Mr. Skuse as the owner of the F/V GOLDEN URCHIN from March 16, 1988, through December 31, 1991.

<sup>5</sup>RAM's records show Mr Skuse as the owner of the vessel between February 9, 1988, and December 31, 1990.

<sup>6</sup>No receipts for the sales were provided by Mr. Skuse.

<sup>7</sup>See, Mr. Skuse's affidavit of July 3, 1994.

on fish tickets or sales receipts.

In his appeal, Mr. Skuse asserts that on April 4, 1991, the Alaska State Troopers seized all of the his records in an “unrelated incident.” He states that his books and papers were returned to him on November 9, 1994, but that he is uncertain whether the returned items included all of his records. [Appeal, ¶4] Mr. Skuse believes that the fish tickets for the landings in question may still be in the possession of the state troopers. At the hearing, Trooper Stanton testified that items were seized from Mr. Skuse, including some fishing documents, but that an inventory list of the items seized did not list any fish tickets and that he could not specifically recall any fish tickets being seized.

Mr. Skuse also claims additional QS, based on his partnership in 1988 with Mr. Doug Parish, the owner of the F/V GERLIN. RAM's records show that the vessel was owned by Mr. Parish in 1988, and that all of the QS resulting from the landings made from the vessel during that period of time was issued to Mr. Parish. As proof of his partnership with Mr. Parish, Mr. Skuse submitted his personal log book, and a State of Alaska fish ticket, showing landings of halibut from the F/V GERLIN on May 25, 1988.

## 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 the QS qualifying period (1988, 1989, or 1990).<sup>8</sup> To be considered a “legal landing,” the fish must have been harvested with fixed gear and landed in compliance with the state and federal regulations in effect at the time of the landing.<sup>9</sup>

An Alaska state regulation in effect during the time of Mr. Skuse's claimed landings required persons selling their catch to unlicensed fish buyers or processors to keep a record of the landings on state of Alaska fish tickets; to deliver the fish tickets to the state of Alaska; and to provide the information necessary for the completion of the state fish tickets. The regulation, Alaska Admin. Code, tit. 5, § 39.130(b) provided:

(b) Each buyer of raw fish and each fisherman selling to buyers not licensed to process fish, and each person or company who catches and processes his own catch or has that catch processed by another person or company, shall keep a record of each landing on ADF&G fish tickets. Fish tickets must be submitted to the ... department [the Alaska Department of Fish and

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<sup>8</sup>See, 50 C.F.R. § 679.40(a)(2), formerly 50 C.F.R. § 676.20(a)(v)(1).

<sup>9</sup>See, 50 C.F.R. § 679.40(a)(3)(v)(A), formerly C.F.R. § 676.20(a)(1)(v).

Game] ... at least once a week. ... The record must include the following: ... [see the regulation for the information required on a state fish ticket].

In essence, persons selling their catch to unlicensed fish buyers or processors are required to record any claimed landings of fish on state fish tickets, and submit those fish tickets to the state of Alaska. Those responsibilities must be fulfilled in order to receive credit for the landings under the IFQ program.

**1. Whether Mr. Skuse made legal landings of halibut that qualify him for additional QS, in the absence of state fish tickets.**

Mr. Skuse claims IFQ credit for landings of halibut that he sold on the street to unlicensed buyers. He admits that the landings were never recorded on state fish tickets. If Mr. Skuse made the landings as claimed, he would have been required to keep a record of the landings of the fish on an Alaska state fish ticket. Because he did not comply with the state regulations, I conclude that he did not legally land the claimed fish, and that, as a consequence, he cannot receive IFQ credit for the landings.

Mr. Skuse also claims IFQ credit for landings of halibut that he sold to canneries. If the landings were made and sold as claimed, Mr. Skuse would have been required to record the landings on state fish tickets, and to submit the tickets to the state of Alaska. Mr. Skuse claims that he did both of those things, but that the state fish tickets were lost or destroyed.

Mr. Skuse has not presented sufficient evidence to show that the halibut landings were recorded on state fish tickets, or that the fish tickets were submitted to the state of Alaska, or that his fish tickets were lost or destroyed. If the landings were recorded on state fish tickets and properly submitted, copies of the tickets would have gone to Mr. Skuse, the processor, the State of Alaska, and the International Pacific Halibut Commission. None of those copies, however, were produced by Mr. Skuse. Furthermore, while there is evidence that some fishing documents were seized from Mr. Skuse, there is no evidence that the documents included state fish tickets or, more particularly, fish tickets for the landings in question. Also, Mr. Skuse's tax preparer only speculates that Mr. Skuse's tax returns were based on state fish tickets.

After reviewing all the evidence, I find that state fish tickets for the claimed landings were not properly submitted to the state of Alaska and that the fish were not "landed in compliance with state and Federal regulations in effect at the time of the landing." Therefore, I conclude these were not "legal landings" under the IFQ program, and that, as a consequence, he cannot receive IFQ credit for the landings.

Mr. Skuse produced other evidence, in lieu of state fish tickets, to show that he legally landed his claimed fish. The other evidence is not relevant, however, because I have concluded that the claimed

landings were not legal.<sup>10</sup>

## **2. Whether Mr. Skuse can receive additional QS, based on his partnership with Mr. Doug Parish, the owner of the F/V GERLIN.**

Mr. Skuse claims credit for additional landings of halibut made from the F/V GERLIN during his partnership with the vessel's owner, Mr. Parish. In Vohs v. Piper,<sup>11</sup> we ruled that in order for a person to receive IFQ credit for landings based on a partnership, the person must show that the partnership owned or leased the vessel from which the landings were made.

RAM's records show that Mr. Parish, and not the partnership, owned the vessel during the period of the landings made from the vessel. Given that Mr. Skuse has not provided evidence to the contrary, I must conclude that Mr. Parish owned the vessel during the relevant period of time. Also, Mr. Skuse has not claimed that the partnership was leasing the vessel from Mr. Parish at the time of the landings. Because QS is based on the ownership or the lease of a vessel, I must conclude that Mr. Skuse cannot receive IFQ credit for these landings.

### FINDINGS OF FACTS

1. State fish tickets for the landings of halibut Mr. Skuse claims he sold to canneries and unlicensed buyers were not properly submitted to the state of Alaska.
2. Mr. Parish owned the F/V GERLIN during the period of Mr. Skuse's claimed landings of halibut from the vessel (1988).
3. The F/V GERLIN was not owned or leased by the Parish-Skuse partnership at the time of the landings in question were made.

### CONCLUSIONS OF LAW

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<sup>10</sup>Even if Mr. Skuse's "other evidence" could be used in lieu of state fish tickets, the evidence, by itself, is insufficient to show that his claimed fish were legally landed. The evidence does not provide the date and location of the harvest of the fish; the type of gear used to harvest the fish; the actual pounds of halibut landed; and the name of the vessel used to land the fish. Consequently, the evidence does not show whether the fish were harvested with fixed gear, during a legal commercial opening, and from an appropriate IFQ regulatory area; whether the halibut was landed from a vessel owned or leased by Mr. Skuse; and the number of pounds landed.

<sup>11</sup>Appeal No. 95-0051, October 28, 1995, *aff'd* October 30, 1995.

1. Halibut landings for which Mr. Skuse did not submit Alaska fish tickets were not “legal landings” under the IFQ program.
2. Where an Appellant has not properly submitted fish ticket to the state of Alaska, as required by state regulations in effect at the time of the landings, other evidence introduced to show that the landings were made is irrelevant and inadmissible.
3. Mr. Skuse cannot receive IFQ credit for landings of halibut made from the F/V GERLIN in 1988, based on an alleged partnership with Mr. Parish, because the vessel was not owned or leased by the partnership at the time of the landings.

#### DISPOSITION

The IAD which denied Mr. Skuse's application for additional halibut QS is AFFIRMED. This Decision takes effect on October 1, 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 by this Office not later than 4:30 p.m., Alaska Time, on the tenth day after the date of this Decision, September 11, 1998. A Motion for Reconsideration must be in writing, must allege one or more specific material matters of law that were overlooked or misunderstood by the Appeals Officers, 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