

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 95-0106
	)	
PATRICK N. NORMAN,	)	DECISION
Appellant	)	
_____	)	January 31, 1996

STATEMENT OF THE CASE

Appellant, Patrick Norman, has appealed an Initial Administrative Determination [IAD] of the Restricted Access Management Division [Division] of the National Marine Fisheries Service, dated March 20, 1995. The Division denied his application for halibut quota share [QS] in the halibut fisheries under the Individual Fishing Quota [IFQ] Program for Pacific halibut and sablefish because he did not prove that he owned or leased a vessel that made legal landings of halibut or sablefish during the QS qualifying years of 1988, 1989, or 1990. Appellant's appeal was timely filed, and adequately shows his interests are directly and adversely affected by the IAD. No hearing was held concerning his appeal because the relevant facts are not in dispute.

ISSUE

Did Appellant lease a vessel and make legal landings from that vessel during the QS qualifying years of 1988, 1989, or 1990?

BACKGROUND

On June 13, 1994, the Division received Appellant's Request for Application [RFA] for halibut QS, claiming a lease of the F/V OCEAN BEAUTY from Dorothy Norman Moonin for the period, "April 1 through September 30." He did not specify the year or years of the lease. On March 30, 1995, the Division issued an IAD, denying Appellant's claim on the basis that he was not a "qualified person"<sup>1</sup> for QS.

On June 1, 1995, this office received Appellant's letter, appealing the IAD. In his appeal, Appellant claimed that he has leased the F/V OCEAN BEAUTY from his brother, Gordon Norman, and their mother, Dorothy Norman Moonin since 1986 for halibut fishing. In support of his appeal, Appellant

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<sup>1</sup>50 C.F.R. 676.20(a)(1) defines a "qualified person" as: "... a person that owned or leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year..."

submitted two separate, identical, notarized, and undated documents entitled, "Lease Agreement."<sup>2</sup> One copy was signed by Gordon Norman and Appellant, and the other by the mother and Appellant. The Lease Agreement attested to Appellant's lease of the F/V OCEAN BEAUTY from the vessel's owners, Appellant's mother and brother. The lease was renewable yearly, for 30 per cent of the catch. In addition to the Lease Agreement, Appellant submitted two separate, identical, and notarized letters.<sup>3</sup> The letters, one signed by his brother, and the other by his mother, confirmed Appellant's lease of the F/V OCEAN BEAUTY in years 1986, 1987, and 1988. They further acknowledged that the written "Lease Agreement" (as aforementioned) was an expression of a verbal agreement that existed in years 1986, 1987, and 1988 for the lease of the F/V OCEAN BEAUTY.<sup>4</sup>

The Division's official record shows that all of the landings from the F/V OCEAN BEAUTY were made in 1987 and 1988, during the period of the lease, and in the name of Appellant. It also indicates that no one else has received credit for QS for those landings, including his mother or brother, and that the F/V OCEAN BEAUTY was registered with the State of Alaska in the name of Dorothy Moonin, beginning February 27, 1984, and continuing throughout the period of the lease.<sup>5</sup>

## DISCUSSION

To qualify for QS, a person must show ownership or a lease of a vessel at a time when legal landings of

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<sup>2</sup>The Lease Agreement reads: "This lease is entered into between Patrick Norman and Dorothy Moonin and Gordon Norman who are the owners of the fishing vessel Ocean Beauty located in Port Graham, Alaska. Patrick Norman agrees to lease the Ocean Beauty for salmon seining in the lower Cook Inlet and for Halibut and other ground fish for an agreed upon percentage of 30 per cent. The lease is renewable for each year forward at the above agreed upon terms, unless other terms are negotiated prior to each years fishing season."

<sup>3</sup>The letters read: "This letter is to confirm that Patrick Norman has leased the Ocean Beauty for Halibut fishing in the years 1986, 1987, 1988, the terms of the lease were the same as the terms for his leasing the Ocean Beauty for the salmon fishing in the lower cook inlet. Enclosed please find proof of boat ownership and a copy of a lease agreement. The lease agreement is a written form of a verbal agreement between Patrick Norman, Gordon Norman and myself Dorothy Norman."

<sup>4</sup>Enclosed with the letters was a U.S. Coast Guard Certificate of Documentation, dated February 10, 1989, listing Dorothy C. Moonin and Gordon G. Norman as the sole owners of the F/V OCEAN BEAUTY.

<sup>5</sup>The Division's official record shows Dorothy Moonin as the registered owner of the F/V OCEAN BEAUTY, beginning February 27, 1984, and continuing through December 31, 1991. The information is based on the State of Alaska Commercial Fishing Entry Commission vessel registration records.

halibut or sablefish were made from a vessel during the years of 1988, 1989, or 1990.<sup>6</sup> The IFQ regulations also provide that "a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years" is conclusive evidence of a vessel lease, and that "conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect."<sup>7</sup>

The Appellant has submitted two notarized documents on appeal, signed by Appellant (as the lease holder) and the owners of the F/V OCEAN BEAUTY, which acknowledge a verbal lease agreement between the parties for the vessel in the years 1986, 1987, and 1988. Since the documents are notarized and include all other necessary elements of a conclusive lease of a vessel, I find that Appellant is a qualified person for QS.

#### FINDINGS OF FACT

1. The combined notarized documents relating to the lease of the F/V OCEAN BEAUTY in years 1986, 1987, and 1988 between Appellant, as lease holder, and his brother and mother, as owners, constitute an affidavit of a lease.
2. The Appellant leased the F/V OCEAN BEAUTY in 1988 from the vessel's owners in a QS qualifying year and made landings from that vessel in 1987 and 1988.

#### CONCLUSION OF LAW

1. An affidavit of a vessel lease in a QS qualifying year for a stated time period between the vessel's owner and lease holder is conclusive evidence of a vessel lease for QS.
2. Appellant is a qualified person for QS.

#### DISPOSITION AND ORDER

The Division's Initial Administrative Determination denying Appellant's request for QS is VACATED. The Division is ordered to amend the official record to reflect that the Appellant leased the F/V OCEAN BEAUTY from Dorothy Norman Moonin and Gordon Norman during the years of 1986, 1987, and 1988, and to process Appellant's application for QS accordingly.

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<sup>6</sup>See 50 C.F.R. 676.20(a)(1).

<sup>7</sup>See 50 C.F.R. 676.20(a)(1)(iii).

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Randall J. Moen  
Appeals Officer