

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0107
)	
EVERETT J. LINDHOLM)	DECISION
Appellant)	
_____)	August 5, 1996

STATEMENT OF THE CASE

Appellant Everett J. Lindholm appealed an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on March 20, 1995. The IAD denied Mr. Lindholm's application for Quota Share [QS] under the Individual Fishing Quota [IFQ] program because Mr. Lindholm had failed to show that he owned or leased a commercial fishing vessel upon which legal landings of halibut or sablefish were made during any of the QS Qualifying Years (1988, 1989 or 1990).

On appeal, Mr. Lindholm asks to be found eligible based on the fact that he longlined in the years before and after the QS Qualifying Years and had good reasons for not longlining in 1988-1990. Mr. Lindholm has adequately shown that his interest is directly and adversely affected by the IAD. Because the record contains sufficient information on which to reach a final decision and there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered. 50 C.F.R. § 679.43(g)(2)-(3).¹

ISSUE

Whether hardship or other reasons for failing to make legal landings of halibut during the IFQ qualifying years of 1988, 1989 and 1990 allow a fisherman to be considered a qualified person eligible to receive QS.

BACKGROUND

Everett J. Lindholm has longlined for halibut since 1987. He rigged his vessel, the F/V LINDA'S DRAW for longlining in 1986, but had no production that year due to a breakdown. In 1987, Mr. Lindholm caught approximately 17,000 pounds of halibut. In April of 1988, the vessel, along with its

¹Formerly 50 C.F.R. § 676.25(g)(2)-(3). All IFQ regulations were renumbered, effective July 1, 1996. *See*, 61 Fed. Reg. 31,270 (1996). The wording of the regulations in question was unchanged by the renumbering.

longlining gear, was lost in a storm. In May, 1988, Mr. Lindholm purchased a new vessel, the F/V HUNGRY RAVEN, but ran out of time to rig it for the halibut season. Mr. Lindholm sold the F/V HUNGRY RAVEN and purchased a new vessel, the F/V WINNING HAND, for the 1989 season. Mr. Lindholm stated in his appeal, "[I]n 1989 Exxon spilled oil and we tied the boat up and didn't fish on Kodiak Island. In 1990 we elected to stay with salmon as our primary fisheries. In 1991 we again did halibut and in 1992 we stayed with salmon." Mr. Lindholm contends that his fishery operation was predicated on halibut being part of the gross, and that there were good reasons why he did not land any halibut in 1988, 1989, or 1990.

DISCUSSION

To qualify for the IFQ program for halibut, a person must have owned or leased a vessel that made at least one legal landing of halibut during any one of the three years of 1988, 1989 and 1990. The regulations provide in relevant part:

[A] "qualified person" means a "person" . . . that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year.

* * *

. . . A QS qualifying year is 1988, 1989, or 1990.

50 C.F.R. § 679.40(a)(2)-(3).² Only qualified persons may receive an initial allocation of QS. 50 C.F.R. § 679.40(a)(1).³

The North Pacific Fishery Management Council expressly rejected allowing allocation of QS on the basis of hardship or unavoidable circumstance. The Council determined that providing a three-year qualifying period and allowing applicants to select their best five years of fishing during the base years⁴ was sufficient to compensate applicants whose catch had been reduced as a result of circumstances beyond their control, and that no additional hardship provisions would be considered for the IFQ

²Formerly 50 C.F.R. § 676.20(a)(1).

³Formerly 50 C.F.R. § 676.20(a).

⁴The Council, in basing QS on an applicant's best of five of six or seven years (for sablefish and halibut, respectively), recognized the need to "discount the effects on a person's catch history of one or two years of relatively poor performance due to weather, injury, illness, the EXXON VALDEZ oil spill, or other unfortunate circumstance beyond the control of fishermen." *See*, 57 Fed. Reg. 57,134 (1992).

program. *See* Charles J. Petticrew.⁵

This Office has denied relief to a number of appellants seeking either additional pounds or eligibility on the basis of landings that they claimed would have been made but for an unavoidable circumstance or hardship.⁶ We have ruled in those appeals that the Division has no authority to allocate qualifying pounds that are not based on actual landings. There is no basis for reaching a different conclusion in this appeal.

FINDINGS OF FACT

Appellant did not own or lease a commercial fishing vessel upon which legal landings of halibut or sablefish were made during 1988, 1989 or 1990.

CONCLUSIONS OF LAW

Appellant is not a qualified person eligible to receive QS.

DISPOSITION

The Division's IAD denying the Appellant's application for QS is AFFIRMED. This decision takes effect September 4, 1996, unless by that date the Regional Director orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 10 days after the date of this decision, August 15, 1996.

Rebekah R. Ross
Appeals Officer

I concur in the factual findings of this decision and I have reviewed this decision to ensure compliance with applicable laws, regulations, and agency policies, and consistency with other appeals decisions of this office.

⁵Appeal No. 95-0008, decided July 3, 1996.

⁶*See* Kenneth M. Adams, Appeal No. 95-0004, March 22, 1995; William E. Crump, Appeal No. 95-0024, June 27, 1995; Jimmy D. Hutchens, Appeal No. 95-0094, June 28, 1995; and Michael C. Hatten, Appeal No. 95-0136, January 30, 1996. All of those cases involve claims that the appellants would have had landings but for the EXXON VALDEZ oil spill of 1989. More recently, in Petticrew, at 3-4, we rejected an appellant's physical disability as a basis for granting relief.

Randall J. Moen
Appeals Officer