

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0117
)	
RICHARD W. LUNDAHL,)	DECISION
Appellant)	
_____)	September 30, 1999

STATEMENT OF THE CASE

The Appellant, Richard Lundahl, filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on May 10, 1995. The IAD denied (in relevant part) Mr. Lundahl's request for additional halibut and sablefish quota share [QS] under the Individual Fishing Quota [IFQ] program because he did not have state fish tickets or federal catch reports to support his claim, and because RAM does not have authority to issue QS based on the differing pricing practices of processors for ice and slime.

Mr. Lundahl has adequately shown that his interests are directly and adversely affected by the IAD. 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, no hearing was ordered.²

ISSUE

Did RAM properly deny the Appellant IFQ credit for the weight of ice and slime not reported on a fish ticket?

BACKGROUND

Between 1984 and 1986, the scale weight of halibut and sablefish landed by Mr. Lundahl at Pelican Cold Storage (PCS) and Pelican Seafoods, Inc. (PSI) was 2% more than the weight recorded on state fish tickets. Mr. Lundahl claims that this was because PCS and PSI did not pay for ice and slime during that time.

Between 1987 and 1990, the full scale weight of the fish landed by Mr. Lundahl at PSI was recorded

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 regulations was unchanged by the renumbering.

on state fish tickets. Mr. Lundahl claims that this is because PSI changed its policy to pay for ice and slime.

Mr. Lundahl was not given IFQ credit for the 2% difference in weight that was not recorded on the state fish tickets between 1984 and 1986. However, he did receive IFQ credit for the weight recorded on his scale sheets between 1987 and 1990, because all of that weight was included in the recorded weight on his state fish tickets during that time.

On appeal, Mr. Lundahl claims that he should not be denied IFQ credit for the weight of ice and slime that was not included in his state fish tickets for 1984-1986, because it is discriminatory to base amounts of QS on the differing policies of fish buyers or fish processors.

DISCUSSION

Did RAM properly deny the Appellant IFQ credit for the weight of ice and slime not reported on a fish ticket?

Under the regulations of the IFQ program, as implemented by RAM, a person's QS is calculated based on the weight of legally landed halibut and sablefish recorded on state fish tickets or federal catch reports.³ That is because the only evidence that may be used for determining the weight of fish for purposes of QS, is the weight of the fish recorded on state fish tickets or federal catch reports.⁴ Other evidence may be considered on appeal to prove the weight of the fish, if it can be shown that the state fish tickets [federal catch reports] were lost or destroyed, or written in error.⁵

Mr. Lundahl asks for additional QS, based on scale sheets that are 2% greater in weight than the weight recorded on state fish tickets during 1984-1986. He claims that the 2% difference in weight is due to the policy of the fish buyer or processor at that time to not pay for and include ice and slime on state fish tickets.

³See, 50 C.F.R. § 679.40(a)(4)(i), which provides that a person's halibut QS is to be calculated according to the person's best five of seven years of total legal landings of halibut during 1984-1990. See also, 50 C.F.R. § 679.40(a)(4)(ii), which provides that a person's sablefish QS is to be calculated according to the person's best five of six years of total legal landings of sablefish during 1985-1990.

⁴See, 50 C.F.R. § 679.40(a)(3)(v)(B), which provides that evidence of a legal landing of halibut and sablefish is limited to state and 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. An Alaska state fish ticket is considered a state catch report. Id.

⁵See, Jack C. Kvale, Appeal No. 95-0103, September 30, 1998, at note 8.

Under the IFQ regulations, the only evidence that can be used to calculate the amount of an initial issuance QS is the weight of landed fish recorded on state fish tickets or federal catch reports. Therefore, Mr. Lundahl cannot receive IFQ credit for the weight of ice and slime included on scale sheets but not on a fish ticket.

Nor can Mr. Lundahl be issued additional QS based on the weight of ice and slime that was not recorded on his state fish tickets because of the policy of the fish processor or fish buyer to not pay for ice and slime. Mr. Lundahl argues that it is discriminatory to base QS on the varying policies of fish buyers or fish processors with regard to ice and slime.

It is the common practice of fish processors and fish buyers to record on state fish tickets only the weight of fish that was purchased by the fish processor or fish buyer. The price paid for the fish can include the weight of ice and slime, depending on the policy of the fish processor or fish buyer to pay for ice and slime. The IFQ regulations do not (on their face) prohibit the issuance of QS for the weight of ice and slime of landed fish. Because the Council⁶ was aware of the practices and policies of fish processors and fish buyers with regard to ice and slime, it is reasonable that the Council intended that ice and slime could be included in the calculation of QS under the IFQ program.

In light of this, I conclude that the IFQ regulations allow for ice and slime to be included in the calculation of QS, if the ice and slime is included in the weight of the fish recorded (or included) on state fish tickets. The fact that ice and slime was included in Mr. Lundahl's QS for 1987-1990, does not merit IFQ credit for ice and slime during 1984-1986. The price paid for the weight of fish, which can include ice and slime, and the resulting inclusion of ice and slime on a state fish ticket, is a private and discretionary matter between the fisherman and the fish buyer (or fish processor).⁷ I conclude that RAM properly denied IFQ credit for the weight of ice and slime that was not reported on Mr. Lundahl's fish tickets.

FINDINGS OF FACT

1. The fact that ice and slime was included in Mr. Lundahl's QS for 1987-1990, does not merit IFQ credit for ice and slime during 1984-1986.
2. Mr. Lundahl's fish tickets were not written in error.

⁶The North Pacific Fishery Management Council.

⁷Interview of Mr. Herman Savikko, State of Alaska Department of Fish and Game, Division of Commercial Fisheries, on November 13, 1997, by Appeals Officer Randall Moen. As of December 12, 1997, the landed scale weight of unwashed Pacific halibut and sablefish is given a standardized 2% deduction for ice and slime, for purposes of debiting a fisherman's IFQ account. *See*, 62 Fed. Reg. 60,667-60,668 (1997).

CONCLUSIONS OF LAW

1. Under the IFQ regulations, the only evidence that can be used to calculate the amount of an initial issuance QS is the weight of landed fish recorded on state fish tickets or federal catch reports.
2. Mr. Lundahl cannot receive IFQ credit for the weight of ice and slime included on scale sheets but not on a fish ticket.
3. The IFQ regulations allow for ice and slime to be included in the calculation of QS, if the ice and slime is included in the weight of the fish recorded (or included) on state fish tickets.
4. RAM properly denied IFQ credit for the weight of ice and slime that was not reported on Mr. Lundahl's fish tickets.

DISPOSITION

The IAD denying Mr. Lundahl's request for additional QS is **AFFIRMED**. This Decision takes effect November 1, 1999, 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, October 12, 1999. 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 or points and authorities in support of this motion.

Randall J. Moen
Appeals Officer