

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0136
)
MICHAEL C. HATTEN,) DECISION
Appellant)
_____) January 30, 1996

STATEMENT OF THE CASE

Appellant Michael C. Hatten has filed a timely appeal of an Initial Administrative Determination [IAD] of the Restricted Access Management Division [Division] of the National Marine Fisheries Service, dated July 21, 1995. The Division denied his application for additional qualifying pounds of halibut for quota share [QS] under the Individual Fishing Quota [IFQ] Program for Pacific halibut and sablefish because Appellant's request was not supported by the information in the Division's official record. Appellant's appeal adequately shows that his interests are directly and adversely affected by the IAD. No hearing was held concerning the appeal, as the relevant facts are not in dispute.

ISSUES

1. Did Appellant own the F/V INLET VENTURE on the dates of the landings of halibut made from the vessel, May 7 and June 3, 1987?
2. Is Appellant entitled to know the source and amount of qualifying pounds attributable to landings in 1988 from the F/V INLET VENTURE?
3. May Appellant receive credit for QS for landings not made in 1989 as a result of the EXXON VALDEZ oil spill?

BACKGROUND

On February 16, 1994, the Division received a request for application [RFA] for QS in the halibut fishery. The Division subsequently sent Appellant a three-part QS Application which showed that Appellant's QS would be based on a total of 10,705 qualifying pounds of halibut. The QS Application showed that Appellant would not receive QS credit for landings of halibut in 1987 and 1989; and because of confidentiality it did not disclose the amount of qualifying pounds for 1988.¹ On June 15,

¹The information could not be released because the Division had not received the approval from an individual other than Appellant (Appellant's son) who had made landings from the F/V INLET VENTURE. An individual's catch and landings records are confidential under state and federal law, and may not be disclosed without a valid waiver from the individual.

1994, the Division received the QS Application back from Appellant. On it, the Appellant claimed credit for an additional 5,000 and 6,041 qualifying pounds of halibut that he landed in 1987 and 1988, respectively, and for an additional estimated 5,000 pounds of halibut that he did not land in 1989 because of the EXXON VALDEZ oil spill.²

On July 21, 1995, the Division issued an IAD denying Appellant QS credit for landings from the F/V INLET VENTURE in 1987 on the basis that he was not the vessel's registered owner.³ The IAD further stated that the Division was unable to disclose the total number of pounds credited to Appellant in 1988 because it had not secured approval of the release of that information from the person(s) who made the landings.⁴ The IAD also denied Appellant QS credit for landings that Appellant estimated he would have made in 1989, but for the oil spill.

On September 5, 1995, Appellant appealed the IAD, claiming credit for landings of halibut from the F/V INLET VENTURE in 1987, 1988⁵, and 1989. The Division's official record shows that Appellant was credited for landings made the vessel in 1988. Appellant submitted, as part of his appeal, the following relevant documents: a U.S. Coast Guard abstract of title, certified on September 20, 1994, showing Appellant's ownership of the F/V INLET VENTURE, since April 9, 1987; a March 6, 1987, notarized purchase agreement of the F/V APPLE BOX (which was renamed the F/V INLET VENTURE on May 23, 1988), between Robert and Catherine Harris (sellers) and Appellant; a notarized letter from Robert and Catherine Harris, dated August 15, 1995, affirming their registration of the F/V INLET VENTURE in 1987, prior to their sale of it to Appellant; a notarized statement by Appellant's son, Michael J. Hatten, dated August 3, 1995, which relinquished all IFQ rights to Appellant that were attributable to halibut landings from the F/V INLET VENTURE; and two state of Alaska fish tickets for halibut landings from the F/V INLET VENTURE in 1988, one in the name of Appellant, and the other in the name of Michael J. Hatten. According to the Division's official record, no one has ever received QS for landings in 1987 from the F/V INLET VENTURE; and Appellant is the only individual who landed fish in 1987 from that vessel.⁶

²See Part 3 "Worksheet" of Appellant's Application for QS.

³The Division uses State of Alaska Commercial Fishing Entry Commission's [CFEC] vessel registration records to determine vessel ownership. CFEC's records showed Robert G. Harris as the vessel's registered owner, beginning April 23, 1987. Appellant is listed as the registered owner beginning March 4, 1988, through at least December 31, 1991.

⁴See note 1, supra.

⁵Appellant believes he did not receive any credit for landings from the F/V INLET VENTURE in 1988, presumably because the total number of pounds for the landings was not disclosed on his QS Application.

⁶Landings of halibut were made on May 7 and June 3, 1987, totalling 6,920 pounds.

DISCUSSION

1. Did Appellant own the F/V INLET VENTURE on the dates of the landings of halibut from the vessel, May 7 and June 3, 1987?

To receive credit for QS for landings of halibut from the F/V VENTURE, the Appellant must show proof that he owned the at the time of the landings.⁷ The best evidence of vessel ownership is, in order of priority, a U.S. Coast Guard abstract of title, a certificate of registration that is determinative of ownership, and a bill of sale.⁸

Appellant has submitted on appeal a U.S. Coast Guard abstract of title, dated September 20, 1994, which shows that his ownership of the F/V INLET VENTURE began April 9, 1987. Given that the landings from the vessel occurred on May 7 and June 3 of 1987, and that an abstract of title is the best evidence of proof of ownership of a vessel,⁹ I find that Appellant owned the F/V INLET VENTURE at the time of the landings in 1987, and should, therefore, be awarded credit for such landings.

2. Is Appellant entitled to know the source and amount of the qualifying pounds attributable to those landings?

Appellant claims in his appeal that he did not receive credit for QS for landings from the F/V INLET VENTURE in 1988. He is mistaken.¹⁰ Appellant's IAD only denied him credit for QS in years 1987 and 1989. However, he was awarded credit for 1988. The Division was required by law to maintain the confidentiality of information about the landings made by others from Appellant's vessel in 1988. At the same time it was permitted to use (and did use) that information to determine Appellant's QS. Thus, Appellant did not lose credit for QS in 1988, only the right to know what landings he was being given credit for.

However, in light of new evidence that has been submitted on appeal, Appellant should now be granted that information. Appellant submitted on appeal a letter from his son, Michael J. Hatten, dated August

⁷See 50 C.F.R. 676.20(a)(1).

⁸See 50 C.F.R. 676.20(a)(1)(ii).

⁹See 50 C.F.R. 676.20(a)(1)(ii).

¹⁰An inquiry by this office into the Division's official record shows Appellant received credit for three landings of halibut, totalling 5,235 pounds, from the F/V INLET VENTURE in 1988. The landings were for 1,930 pounds of halibut by Appellant on June 21, 1988; and for 2,944 pounds of halibut on May 25, 1988, and 361 pounds of halibut on September 9, 1988, both by Appellant's son, Michael J. Hatten.

3, 1995, that "relinquished" all rights of IFQ to Appellant for landings made from the F/V INLET VENTURE during 1986-1994.¹¹ Given that the Appellant's son is familiar with his father's circumstances (having fished for years with him from the F/V INLET VENTURE); is willing to give all rights to the landings to his father; and wrote the letter specifically for the appeal (given its date), it is reasonable to construe the son's letter as an expression of his consent to the release of that information. It is, therefore, appropriate for Appellant to be given access to the landings information relating to the F/V INLET VENTURE in 1988, particularly in light of the fact that he and his son are the only persons to have made landings from the vessel during that year.

3. May Appellant receive credit for QS for landings not made in 1989 as a result of the EXXON VALDEZ oil spill?

Appellant claims credit for QS for landings that he believes he would have made in 1989 but for of the EXXON VALDEZ oil spill. In Kenneth M. Adams,¹² this office found that the Division lacked the authority to issue QS on the basis of landings never made, and that it was also the expressed intent of the North Pacific Fishery Management Council [Council] that such not be done. Directly addressing the spill situation, Adams noted that the Council had considered the negative impact of the spill on commercial fishing, and it was for that reason that it extended the qualifying period for QS over a three year period, which included the year before and the year after the spill. For these reasons, Appellant cannot receive credit for 1989 landings that he might have made under different circumstances, but did not in fact make, notwithstanding the occurrence of an event over which he had no control, such as the EXXON VALDEZ oil spill.

FINDINGS OF FACT

1. Appellant owned the F/V INLET VENTURE on the day the halibut landings in question were made from the vessel (May 7 and June 3, 1987). His ownership of the vessel began April 9, 1987, and continued at least through September 20, 1994.
2. Appellant received credit for QS for landings made in 1988 from the F/V INLET VENTURE.
3. The August 3, 1995, notarized letter of Appellant's son, Michael J. Hatten, is an expression of his consent for the release of information in the Division's official record relating to his landings from the

¹¹The letter reads: "Please be advised that **ANY** and **ALL** halibut landings made by me between the years of 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994 from my father's vessel, U.S.C.G. Documentation Number 607901, I have chosen to relinquish any and all I.F.Q. rights to my father." [emphasis in original]

¹²Appeal No. 95-0004, decided March 22, 1995, affirmed April 19, 1995.

F/V INLET VENTURE in 1988, and is the equivalent of the waiver of confidentiality required under the IFQ program.

4. Appellant and Appellant's son, Michael J. Hatten, are the only persons in the Division's official record who made landings in 1988 from the F/V INLET VENTURE.

CONCLUSIONS OF LAW

1. Appellant cannot receive credit for landings that were not made because of the 1989 EXXON VALDEZ oil spill.

DISPOSITION AND ORDER

That portion of the Division's IAD that denied the Appellant's claim for additional qualifying pounds of halibut based on landings from his vessel on May 7 and June 3, 1987 is VACATED. That portion of the IAD that refused to release to the Appellant information about 1988 landings from his vessel is VACATED. That portion of the IAD that denied the Appellant's claim to compensatory QS for 1989 is AFFIRMED. The Division is ORDERED to amend the official record to reflect that the Appellant has been the owner of the F/V INLET VENTURE since April 9, 1987, and to allocate to the Appellant appropriate additional qualifying pounds of halibut and resulting QS and IFQ for 1996. The Division is also ORDERED to provide Appellant with the information in its official record relating to landings from the F/V INLET VENTURE in 1988. This decision takes effect on February 29, 1996, unless by that date the Regional Director orders the review of the decision.

In order to ensure that QS and Individual Fishing Quota [IFQ] is issued to the Appellant for the 1996 season, I recommend that the Regional Director expedite review of this decision and, if there is no substantial disagreement with it, promptly affirm the decision and thereby give it an immediate effective date.

Randall J. Moen
Appeals Officer