

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0141
)
S.Y.B. FISHERIES,) DECISION
Appellant)
_____) April 7, 1998

STATEMENT OF THE CASE

The Appellant, a partnership known as S.Y.B. Fisheries [SYB], filed an appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on September 11, 1995. The IAD denied SYB's claim under the Individual Fishing Program [IFQ] for additional qualifying pounds of sablefish landed from the F/V BALTIC SEA in 1988. RAM denied the Appellant's claim on the grounds that the evidence of the landings was untimely and insufficient. On appeal, SYB reasserts and expands its claim for additional qualifying pounds of sablefish.

SYB has adequately shown that its interests are directly and adversely affected by the IAD. It requested a hearing to present further evidence of the landings. 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. § 679.43.²

ISSUES

1. Whether SYB filed a timely appeal for additional qualifying pounds of sablefish QS.
2. Whether the landings reflected in SYB's fish tickets would result in qualifying pounds if SYB's appeal had been timely filed.
3. To whom should any qualifying pounds be awarded?

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

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

BACKGROUND

On January 12, 1998, a partnership known as S.Y.B. Fisheries, was formed.³ The partnership consisted of Floyd Hutchens, Thomas Copeland, Erling Carlson, and James Rockom. A combined vessel ownership and partnership agreement provided that *each* of the partners owned an undivided 25% interest in the F/V BALTIC SEA and in the partnership, as tenants-in-common.⁴ The vessel was used by the partnership to fish both halibut and sablefish.

The U.S. Coast Guard abstract of title for the vessel shows that the vessel was owned from January 13, 1988, until March 27, 1990, by: "Floyd J. Hutchens, Jr., Thomas A. Copeland, Erling J. Carlson, and James W. Rockom, each owning 25% int. d/b/a S.Y.B. Fisheries."

On March 27, 1990, Mr. James McMillan purchased Mr. Rockom's 25% interest in the partnership and the vessel.⁵ The purchase was recorded in the abstract and was governed by various documents between the interested parties. The documents⁶ provided that the sale of Mr. Rockom's interests *dissolved* the partnership [between Hutchens, Copeland, Carlson, and Rockom], and created a new partnership [between Hutchens, Copeland, Carlson, and *Mr. McMillan*] and a new tenancy-in-common in the vessel. The name of the new partnership did not change with the sale of Mr. Rockom's interests. The "new" partnership is the Appellant, SYB.

On April 18, 1994, SYB filed a Request for Application [RFA] for halibut and sablefish quota shares [QS], on the basis of SYB's asserted ownership of the F/V BALTIC SEA. No dates of vessel

³See, the "S.Y.B. Tenancy-in-Common Agreement with Partnership Provisions," dated 1/12/88.

⁴See, the "S.Y.B. Tenancy-in-Common Agreement with Partnership Provisions [Agreement], dated 1/12/88, which states that Floyd Hutchens, Thomas Copeland, Erling Carlson, and James Rockom hold an equal undivided interest [25%] in the F/V BALTIC SEA, as tenants-in-common, and in the partnership. The Agreement specifically provides that the F/V BALTIC SEA is not the property of the partnership, that the partnership was formed to harvest, tender, process, and market the vessel's catch. The Agreement was signed by all of the co-owners/partners.

⁵See, the "Vessel and Joint Venture Sale Agreement," dated March 13, 1990, between Mr. Rockom and Mr. McMillan; and the abstract of title for the vessel, which shows the recording of a bill of sale on March 27, 1990.

⁶See, the "Vessel and Joint Venture Sale Agreement, dated March 13, 1990, between James Rockom and James McMillan, at page 1, which provides that a new partnership and tenancy-in-common in the F/V BALTIC SEA is created with the sale of Mr. Rockom's interests to Mr. McMillan. *See also*, the "S.Y.B. Tenancy-in-common Agreement with Partnership Provisions, dated 1/12/88, at page 8, which provides that the partnership [between Hutchens, Copeland, Carlson, and Rockom] is dissolved if an owner sells his interest in the vessel.

ownership were specified on the RFA. While the appeals record indicates that RAM received an application from SYB, there is no copy of the application in SYB's file.

RAM's official record shows that Mr. Hutchens was the registered owner of the vessel between March 25, 1988, through December 31, 1991; and that the vessel made landings of sablefish in April 1988, and in April and May 1990, and landings of halibut in June and September 1988.

SYB submitted certificates of documentation⁷ issued by the U.S. Coast Guard for the F/V BALTIC SEA, to prove that SYB owned the vessel during the period in which Mr. Hutchens was shown as the registered owner. The language describing the ownership of the vessel in the certificates and in the U.S. Coast Guard abstract of title was virtually identical.

RAM accepted the certificates as proof of SYB's ownership, and changed its records to show that SYB owned the vessel during that time. In approving the change, Mr. Philip Smith, RAM's administrator, wrote:⁸

This is a 4-member partnership. I believe that James Rockom, if he applies, is eligible for 25% of the 'Baltic Sea' landings for 1988 and 1989 [there were no landings in 1989]. Balance of QS should go to S.Y.B. Fisheries, the current partnership.

RAM sent SYB a QS Data Summary, which reflected the change. The QS Data Summary showed that SYB qualified for both halibut and sablefish QS, based on its ownership of the F/V BALTIC SEA from 1988 through 1991. According to the QS Data Summary, SYB (1) owned the F/V BALTIC SEA between January 1, 1988, and April 30, 1990, and between May 8, 1990, and December 31, 1991; and (2) made qualifying landings of both halibut and sablefish QS.

SYB was instructed that the QS Data Summary was based on the information in RAM's official record. SYB was given 90 days, until January 6, 1995, to contest the QS Data Summary.

During the 90-day period, RAM approved Mr. Hutchens' May 1-7, 1990, lease of the F/V BALTIC SEA from SYB. SYB was issued a new QS Data Summary to reflect the reduction of QS caused by Mr. Hutchens' lease.

⁷See, the Certificates of Documentation issued by the U.S. Coast Guard for the F/V BALTIC SEA on February 1988 and May 1989. A Certificate of Documentation, dated May 1991, was also filed for the vessel, which included the name of Mr. McMillan for Mr. Rockom.

⁸See, the "Staff Request for Authority to Change NMFS Official IFQ Record," requested by Peggy Hunnings on July 22, 1994.

Three days before the 90-day deadline, on January 3, 1995, RAM received a letter from Mr. McMillan, on behalf SYB, which stated that the “Poundage accrued in 1988 while Jim Rockom was operating the F/V Baltic Sea is not reflected in the summary.”

On January 30, 1995, SYB was awarded halibut and sablefish QS, based on the qualifying landings of the F/V BALTIC SEA in RAM’s official record. The award included the portion of QS that would have been awarded to Mr. Rockom if he had applied for QS. SYB received credit for all of the qualifying landings made on Mr. Rockom's fishing permit from the F/V BALTIC SEA in 1988 that were recorded in the official record. There were only two such landings.⁹

On May 30, 1995, five months after the QS was issued to SYB, RAM received another letter from Mr. McMillan, claiming credit for two sablefish landings purportedly made on Mr. Rockom's fishing permit from the F/V BALTIC SEA in 1988. Enclosed with the letter were copies of two State of Alaska fish tickets [G86-000644 and G86-000511], showing landings of sablefish from the F/V BALTIC SEA in 1988 on Mr. Rockom's fishing permit.¹⁰ In the letter, Mr. McMillan stated that “These deliveries were not shown on our initial allocation of IFQ’s.” SYB later substituted State of Alaska fish ticket G86-000512 in place of G86-000511.

In a written IAD, dated September 11, 1995, RAM rejected the two fish tickets as untimely and insufficient evidence.¹¹ Neither of the fish tickets showed the statistical area in which the fish were harvested. One of the tickets was not signed by the permit holder/fisherman. SYB claims that all the fish were caught in the Central Gulf of Alaska and landed at the Copper River Fisherman's Cooperative.¹² Because the statistical area was not listed on the tickets, it could not be determined whether the fish had been harvested in the state-managed waters of Prince William Sound, or under a State of Alaska limited entry program, and thus not entitled to IFQ credit.¹³

⁹The landings were made on June 22, 1988, and June 25, 1988.

¹⁰The fish tickets were for landings of sablefish made from the F/V BALTIC SEA during May 19, 1988, and May 24 and 25, 1988.

¹¹The IAD also addressed other concerns raised by Mr. McMillan in his January 3, 1995, letter, but which were not raised by SYB in its appeal.

¹²See, Mr. McMillan's letter of appeal, August 1, 1996.

¹³See, the memo from Jessica Gharrett (of RAM) to Ed Hein and Randall Moen (Appeals Office), January 30, 1996. Under 50 C.F.R. § 676.20(a)(1), landings of sablefish harvested in Prince William Sound, or under a State of Alaska limited entry program, cannot be considered in determining whether a person is a qualified person. RAM has consistently interpreted this regulation to mean that landings of sablefish harvested in Prince William Sound cannot be credited at all under the IFQ program.

In the IAD, RAM informed SYB that it had a right to appeal the IAD, but that the appeal must be received by November 9, 1995. SYB's appeal of the IAD was received on November 8, 1995. In its appeal, SYB restated its claim for additional QS. SYB also submitted two more state fish tickets [G86-000502 and G86-000572], showing landings of sablefish from the F/V BALTIC SEA in 1988 on Mr. Hutchens's fishing permit.¹⁴ One fish ticket did not show the statistical area in which the fish were harvested. All told, SYB's claim for additional sablefish QS on appeal is based on four state fish tickets.¹⁵

RAM's records show that Mr. Hutchens, Mr. Carlson, and Mr. Copeland filed individual RFA's. Mr. Rockom never filed for QS. Only Mr. Hutchens, however, claimed QS as an individual, on the basis of his claimed lease of the F/V BALTIC SEA during May 1-7, 1990.

DISCUSSION

1. Timeliness of SYB's appeal

Under the regulations of the IFQ program, any person whose interest is directly and adversely affected by an IAD may file a written appeal.¹⁶ The regulations do not specify what constitutes an IAD. Traditionally, RAM issues formal written IADs. In *Tiger, Inc.*,¹⁷ we concluded that the issuance of QS is itself an appealable IAD because it represents RAM's determination regarding the issuee's application for QS. If an issuee disagrees with the amount of QS issued (or any other aspect of the QS award), the issuee has a right to appeal the award within the appeal period following the issuance of an IAD, which in this case is within 60 days after the issuance of the QS.¹⁸

Three days before SYB's deadline for contesting its QS Data Summary, RAM received a letter from Mr. McMillan, on behalf of SYB, asking for the pounds accrued in 1988 while Mr. Rockom was operating the F/V BALTIC SEA. The QS Data Summary, based on the official record, included two

¹⁴The landings on Mr. Hutchens' fishing permit were made on March 21, 1988, and May 2, 1988.

¹⁵The fish tickets for SYB's additional claimed landings show that landings of sablefish made from the F/V BALTIC SEA on March 21, May 4, May 19, and May 25, 1988.

¹⁶50 C.F.R. § 679.43(b).

¹⁷Appeal No. 95-0100, November 17, 1995, *aff'd on reconsideration*, February 26, 1996, *aff'd* March 4, 1996.

¹⁸50 C.F.R. § 679.43(d)(1). *See*, 60 Fed. Reg. 6448 (1995), where the deadline for the filing of an appeal was reduced from 90 federal working days to 60 calendar days. The 60-day filing requirement became effective on January 30, 1995, the same day that QS was issued to SYB.

landings that were made in 1988 on Mr. Rockom's fishing permit.

On January 30, 1995, SYB was awarded QS for all of the qualifying pounds in the QS Data Summary. RAM did not issue a written IAD at the time of the award because the award included all the landings in the official record that were made in 1988 on Mr. Rockom's fishing permit. SYB waited five months to challenge the award, submitting two fish tickets for landings made in 1988 on Mr. Rockom's fishing permit. Thereafter, RAM issued a written IAD.

Mr. McMillan's last-minute submission [January 3, 1995], stating that the QS Data Summary did not reflect "poundage accrued in 1988 while Jim Rockom was operating the F/V BALTIC SEA," was insufficiently specific to adequately notify RAM of the fish tickets for which SYB now seeks credit. Because the QS Data Summary appeared to include all the landings SYB was requesting, and because SYB received credit for all of the landings in the QS Data Summary, RAM, at the time it issued QS, could not reasonably have known that SYB was being denied anything that it had applied for. Thus, there was no reason for RAM to issue a written IAD before receiving SYB's challenge to the QS award on May 30, 1995.

Under these circumstances, SYB should have raised its objection to the amount of QS issued within 60 days after the issuance. Instead, SYB waited five months to notify the agency that it disagreed with the amount of QS issued. That was simply too late.

Although SYB did file an appeal within 60 days after the written IAD was issued, the substance of this appeal relates to the QS award itself, which was made January 30, 1995. SYB's appeal period began running on that date, rather than the date of the written IAD (September 11, 1995). If the period for filing an appeal did not begin at the time QS was issued, but only at the time a written IAD was issued, SYB effectively would have had an indefinite or open-ended period of time to file an appeal. In Tiger, Inc., we explained that "the applicant does not have an unlimited time to object. The objection must be raised within a reasonable time after the denial. That is what the appeal filing period is for."¹⁹ We decided in that case that the regulations required that the same time limit must apply whether the appeal was taken from a written IAD or from the issuance of QS.

Therefore, because the deadline for filing an appeal is 60 days after the award of QS, and because SYB did not challenge its award until five months after the award of QS, we must conclude that SYB's appeal was not timely filed. Therefore, we cannot grant SYB relief in this appeal.

2. Whether the landings reflected in SYB's fish tickets would result in qualifying pounds if SYB's appeal had been timely filed.

¹⁹Appeal No. 95-0100, November 17, 1995, at 7.

Although our conclusion on the timeliness issue is determinative of this Appeal, we choose not to leave unresolved the merits of SYB's claims, in light of the U.S. District Court's remand order in Prowler Partnership v. National Marine Fisheries Service, Case No. A96-126 CV, December 9, 1997. The evidence shows that if SYB's appeal had been timely filed, the state fish tickets submitted by SYB could have been considered on appeal as timely evidence, and that two of the fish tickets would have been sufficient evidence of additional qualifying pounds of sablefish.

a. Timeliness of the state fish tickets.

Under the regulations of the IFQ program, all evidence that is "relevant, material, reliable, and probative" may be considered on appeal for purposes of determining QS.²⁰ In Tiger, Inc., we held that claims for QS must be timely made for evidence relating to those claims to be considered on appeal. A claim is timely made if raised at any time during the QS application period, including the 90-day deadline for substantiating claims. In Adamonis,²¹ we held that claims should be broadly construed in order to supply the meaning intended by the applicant to serve the ends of justice.

SYB claimed ownership of the F/V BALTIC SEA on its RFA for halibut and sablefish QS. RAM's records showed, in part, that landings of sablefish QS were made from the vessel in 1988, during the time of SYB's ownership of the vessel. This claim was acknowledged by RAM in the QS Data Summary that it sent to SYB. SYB also claimed sablefish QS, as a result of landings of sablefish made from the vessel in 1988 by Mr. Rockom, in a letter to RAM three days before the end of the 90-day deadline for substantiating claims. RAM also acknowledged this claim in its award of QS to SYB. Both claims related to, or were encompassed within, SYB's original claim to the landings of sablefish made from the F/V BALTIC SEA in 1988. Both claims were timely made because they were made during the application period, including the 90-day period for substantiating claims.

SYB has submitted four state fish tickets, showing landings of sablefish made from the F/V BALTIC SEA in 1988. Two of the landings were made on Mr. Rockom's fishing permit; the other two fish tickets were made on Mr. Hutchens' fishing permit. All four fish tickets are relevant to SYB's claim, even though the fish tickets were landed on different fishing permits, because QS is based on vessel ownership [or lease], not on landings made on the applicant's fishing permit. Therefore, the fish tickets would have been admissible for consideration on appeal.

b. The validity of the state fish tickets.

To qualify for QS under the regulations of the IFQ program, a person must have owned or leased a vessel that made a legal landing of halibut or sablefish from any IFQ regulatory area in any QS

²⁰See, 50 C.F.R. § 676.43(j).

²¹Charles A. Adamonis, Appeal No. 95-0133 (Decision on Reconsideration), February 7, 1997.

qualifying year (1988, 1989, or 1990).²² A state fish ticket is evidence of a legal landing of halibut or sablefish.²³ The state fish ticket must show the amount of halibut or sablefish harvested, the International Pacific Halibut Commission regulatory area or groundfish reporting area of the harvested fish, the vessel name and gear type used to harvest the fish, and the date of harvesting, landing, or reporting of the fish. Other evidence of a legal landing may be considered on appeal to cure a deficient state fish ticket that lacks an essential piece of information under the IFQ regulations²⁴ or to correct information incorrectly listed on a fish ticket.²⁵

Sablefish harvested within Prince William Sound cannot be used for determining QS.²⁶ Prince William Sound was open for sablefish fishing under Alaska state regulations between April 1, 1988, and July 21, 1988.²⁷

Fish ticket G-000644 (James Rockom).

Fish ticket G-000644 shows that 5,675 pounds of sablefish were landed from the F/V BALTIC SEA on Mr. Rockom's fishing permit at Cordova on May 19, 1988, and processed by Copper River Fishermen's Cooperative. The fish ticket is signed by the fish buyer, but not by the fisherman (Mr. Rockom). The ticket does not indicate the statistical area in which the fish were harvested.

The pilot log of the F/V BALTIC SEA shows only that the vessel was fishing in statistical area 465903, outside of state-managed waters, near McLeod Harbor in the Central Gulf area, during May 14 and 15, 1988, three days before the May 19, 1988, delivery and landing of the fish. The pilot log does not show whether fish were actually caught, or the type and amount of fish harvested. There are no pilot log pages for May 16, 17, and 18 of 1988, so the vessel's activities are unknown for that period of time.

Statistical area 465903 and Cordova are near Prince William Sound; Prince William Sound was open for sablefish fishing under state law during that period of time; and RAM's records show that Mr.

²²*See*, 50 C.F.R. § 679.40(a)(2).

²³*See*, 50 C.F.R. § 679.40(a)(3)(v)(B).

²⁴Charles A. Adamonis, Appeal No. 95-0133, April 5, 1996; *aff'd*, Decision on Reconsideration, February 7, 1997.

²⁵Roderick Dexter, Appeal No. 95-0089, January 25, 1996, *aff'd*, January 26, 1996.

²⁶*See supra* note 13.

²⁷*See*, the memo from Jessica Gharrett (RAM) to Ed Hein and Randall Moen (Appeals Office), January 30, 1996.

Rockom had harvested halibut in Prince William Sound in June 1988, one month after the May 19, 1988, landing of the sablefish on the fish ticket.²⁸ Therefore, it is possible that the vessel was fishing in Prince William Sound during the harvest of the sablefish on the fish ticket.

The fish ticket is deficient, and by itself, cannot be used as proof of a legal landing, because it is not signed by the fisherman and because it does not list the statistical area for the harvest of the fish. And we find that the information in the pilot log of the F/V BALTIC SEA is not sufficiently descriptive to prove by a preponderance that the sablefish reported on the fish ticket was actually harvested in statistical area 465903. Therefore, even if this appeal had been timely filed, the sablefish reported on fish ticket G86-000644 would not be eligible for IFQ credit.

Fish ticket G86-000512 (James Rockom).

Fish ticket G86-000512 shows that 6,531 pounds of sablefish were landed from the F/V BALTIC SEA on Mr. Rockom's fishing permit at Cordova on May 25, 1988, and processed by Copper River Fishermen's Cooperative. The fish ticket does not indicate the statistical area for the harvest of the fish. The fish ticket is signed by the fisherman (James Rockom) and the fish buyer (Leslie Justice). Copper River Fishermen's Cooperative is no longer in existence, but Prince William Sound was open for sablefish fishing at the time of the landing of the fish (between April and July 1988).

Ms. Justice states that she did not have enough information to record the statistical area on the fish ticket.²⁹ Normally, the fish buyer relies upon the fisherman for that information.³⁰ While it may have been Mr. Rockom's responsibility to provide the buyer of the fish with the statistical area, he had no apparent reason to intentionally withhold the information. Prince William Sound was open for sablefish fishing, and the IFQ program was not in existence.

The pilot log of the F/V BALTIC SEA indicates that the vessel was in statistical area 475900 on May 23 and 24, 1988, and harvested an estimated 6,000 pounds of sablefish during that time. Statistical area 475900 is outside state-managed waters. We find it more likely than not that the sablefish mentioned in the pilot log were the 6,531 pounds listed on this fish ticket and were harvested outside of state-managed waters.

²⁸RAM's records show that Mr. Rockom made landings of halibut from the F/V BALTIC SEA on his fishing permit on June 22, 1988, in area 2C, statistical area 161, and also on June 25, 1988, in area 3A, statistical area 240 (Prince William Sound).

²⁹See, Leslie Justice's affidavit, July 29, 1996, and the written telephone interview of Ms. Justice by Appeals Officer Randall Moen, August 6, 1996.

³⁰See, notes of Randall Moen (Appeals Office) from telephone conversation with Bruce Simonson (State of Alaska Department of Fish and Game), September 23, 1997.

In determining whether fish ticket G86-000512 is a legitimate record of a legal landing, we have considered that this particular ticket was originally issued to Copper River Fishermen's Cooperative by the State of Alaska. There is no record, however, that this ticket, or any other fish tickets, were received from the cooperative by the Alaska Department of Fish and Game or by the Commercial Fisheries Entry Commission for the month of May 1988.³¹ Because the Copper River Fishermen's Cooperative is no longer in business, and its records are either nonexistent or unavailable, it is not possible to determine whether the cooperative ever actually had a copy of the fish ticket. However, the fish buyer, Ms. Justice, verifies that the signature on the fish ticket is hers, and the signature on the ticket appears to match the signature on her statement. Therefore, we find by a preponderance of the evidence that fish ticket G86-000512 is legitimate, but was never turned in to the State of Alaska by Copper River Fishermen's Cooperative. We conclude that 6,531 pounds of sablefish from this fish ticket were legally landed and would have been creditable for IFQ purposes if SYB's appeal had been timely filed.

Fish ticket G86-000502 (Floyd Hutchens).

Fish ticket G86-000502 shows that 9,276 pounds of sablefish were landed on Mr. Hutchens's fishing permit from the F/V BALTIC SEA on March 21, 1988. Mr. McMillan claims that the actual date of the landing was April 21, 1988. The fish ticket does not indicate the statistical area for the harvest of the fish. The fish ticket is signed by the fisherman (Mr. Hutchens) and the fish buyer (Leslie Justice). Ms. Justice claims that the fish were legally landed at Copper River Fishermen's Cooperative, and that she left the statistical area blank because she did not have enough information to make a determination.³² The pilot log of the F/V BALTIC SEA shows that the vessel was in statistical area 465903, *inside* Prince William Sound, on April 9 and 10, 1988. No other pilot log pages were submitted after April 10, 1988.

SYB's only proof of where its sablefish was harvested is a pilot log that shows a statistical area inside Prince William Sound. Because sablefish harvested inside Prince William Sound cannot be considered for IFQ purposes, the fish ticket cannot be used as proof of a legal landing for additional QS.

Fish ticket G86-000572 (Floyd Hutchens).

Fish ticket G86-000572 shows that 7,472 pounds of sablefish were landed on Mr. Hutchens's fishing permit from the F/V BALTIC SEA at Cordova on May 4, 1988. The fish ticket is signed by the fisherman (Mr. Hutchens) and the fish buyer (Leslie Justice), and lists a statistical area (445931) outside

³¹See, the memo from Jessica Gharrett (RAM) to Ed Hein and Randall Moen (Appeals Office), January 30, 1996.

³²See, Leslie Justice's affidavit, July 29, 1996, and the written telephone interview of Ms. Justice by Appeals Officer Randall Moen, August 6, 1996.

state-managed waters.³³ The fish ticket on its face contains all other information required under the IFQ regulations to serve as evidence of a legal landing. Copper River Fishermen's Cooperative is no longer in business and cannot locate the fish ticket. Leslie Justice affirms in her affidavit that the fish were legally landed at Copper River Fishermen's Cooperative.³⁴ The State of Alaska also cannot locate the fish ticket and has no record of the landing in its data base. According to RAM,³⁵ the State did not receive any fish tickets from Copper River Fishermen's Cooperative during the month of May 1988. Nor can the State locate its hard copies of state fish tickets for groundfish landed in the Cook Inlet area in 1988.³⁶

We find by a preponderance of the evidence that fish ticket G86-000572 is valid, but that it was never turned in to the state by Copper River Fishermen's Cooperative. We conclude that 7,472 pounds of sablefish from this fish ticket were legally landed and would have been creditable for IFQ purposes if SYB's appeal had been timely filed.

3. To whom should any qualifying pounds be allocated?

Having determined that two of the fish tickets submitted by SYB, totaling 14,003 pounds of sablefish, would have been creditable for IFQ purposes if SYB's appeal had been timely filed, we now consider to whom, if any one, these qualifying pounds would have been allocated.

To qualify for QS under the IFQ program, a person (including a partnership) must have owned or leased a vessel that made legal landings of halibut or sablefish during a QS qualifying year: 1988, 1989, or 1990. A former partner of a dissolved partnership (that would otherwise qualify as a person for QS) may apply for QS in proportion to his or her interest in the dissolved partnership.³⁷

Proof of vessel ownership includes, in order of priority, a U.S. Coast Guard abstract of title; a certificate of registration that is determinative of vessel ownership; and a bill of sale.³⁸ The best

³³See, the letter from Jessica Gharrett (RAM) to Randall Moen (Appeals Office), September 5, 1996.

³⁴See, Leslie Justice's affidavit, July 29, 1996.

³⁵See, the memo from Jessica Gharrett (RAM) to Ed Hein and Randall Moen (Appeals Office), January 30, 1996.

³⁶Id.

³⁷See, 50 C.F.R. § 679.40(a)(2)(iii).

³⁸See, 50 C.F.R. § 679.40(a)(3)(ii).

evidence of vessel ownership, if it exists, is the abstract of title. Absent any evidence that an abstract of title is erroneous or fraudulent, NMFS is required to accept that document as proof of ownership.³⁹ In this instance, the abstract of title is ambiguous concerning vessel ownership because it names the four individual partners, followed by the phrase “each owning 25% int. d/b/a SYB Fisheries.” Arguably this could indicate that the vessel is owned by four individuals or by the partnership.

Where an abstract of title is ambiguous, other evidence may be used to clarify the ambiguity.⁴⁰ The U.S. Coast Guard Certificate of Documentation is also ambiguous evidence of ownership because it uses virtually the identical owner description as the abstract of title. An “SYB Fisheries Tenancy-in-Common Agreement with Partnership Provisions,” dated January 12, 1988, and signed by all four partners, states that Mr. Rockom, Mr. Hutchins, Mr. Copeland, and Mr. Carlson each owns a 25 percent undivided interest in the F/V BALTIC SEA as tenants in common. A vessel mortgage, dated March 19, 1989, and signed by all four partners, lists each partner as owning a 25 percent interest in the whole of the vessel. A “Vessel and Joint Venture Sale Agreement,” dated March 13, 1990, recites that James Rockom owns the F/V BALTIC SEA as a tenant in common with Mr. Hutchins, Mr. Copeland, and Mr. Carlson. Based on this evidence, we find that during the entire period in question in this Appeal, the vessel was owned by four individuals as tenants-in-common, and not by the S.Y.B. Fisheries partnership.

Under IFQ regulations, the proper allocation of qualifying pounds is to each of the individual owners who have applied, in proportion to their interests in the vessel. Thus, the 14,003 pounds of sablefish recorded on the two fish tickets, which would have been creditable if the appeal had been timely filed, would be properly allocated as follows:

Floyd J. Hutchens, Jr.	3,500 pounds
Thomas A. Copeland	3,500 pounds
Erling J. Carlson	3,500 pounds

The final 3,500 pounds would go unclaimed because Mr. Rockom never applied for QS and, thus, is ineligible to receive any QS.

Although not at issue in this Appeal, it has come to our attention in the course of considering this issue that other qualifying pounds and resulting QS were apparently allocated and issued in error to S.Y.B. Fisheries. Specifically, 25 percent of the pounds of sablefish and halibut landed from the F/V BALTIC SEA during the period in which Mr. Rockom had an ownership interest in the vessel [January 13, 1988

³⁹Weber v. Kochuten, Appeal No. 95-0122, June 18, 1996, at 3.

⁴⁰*See, e.g., Prowler Partnership v. National Marine Fisheries Service*, Case No. A96-126 CV, (D. Alaska, December 9, 1997), Order, at 7-9.

to March 27, 1990] should have gone unclaimed because Mr. Rockom never applied for QS. RAM's official record, however, shows that these pounds were allocated to S.Y.B. Fisheries, along with the pounds attributable to the other three partners, and that S.Y.B. Fisheries received 100 percent of the resulting QS.⁴¹ This matter is being referred to RAM in a separate memorandum.

FINDINGS OF FACT

1. SYB's 60-day appeal period began running on January 30, 1995, the date the QS was issued, rather than on September 11, 1995, the date of the written IAD.
2. SYB appealed the award of its QS on May 30, 1995, when it submitted a letter to RAM challenging the QS award.
3. Fish tickets G86-000512 and G86-000572 are legitimate, but were never turned in to the State of Alaska by the Copper River Fisherman's Cooperative.
4. The U.S. Coast Guard abstract of title for the F/V BALTIC SEA is ambiguous concerning the vessel's ownership during the period in question in this Appeal.
5. During the entire period in question in this Appeal, the F/V BALTIC SEA was owned by four individuals as tenants-in-common, and not by the S.Y.B. Fisheries partnership.
6. Mr. Rockom never applied for QS.

CONCLUSIONS OF LAW

1. SYB's appeal was not timely filed.
2. Other evidence of a legal landing may be considered on appeal to cure a deficient state fish ticket that lacks an essential piece of information under the IFQ regulations or to correct information incorrectly listed on a fish ticket.
3. If SYB's appeal had been timely filed, two of the fish tickets it submitted could have been considered as timely evidence and would have been sufficient evidence of additional qualifying pounds of sablefish.

⁴¹The original S.Y.B. Fisheries partnership was dissolved when Mr. Rockom sold his interest in the "joint venture" to Mr. McMillan, on March 27, 1990. Under our previous decisions, neither Mr. McMillan nor the "new" S.Y.B. Fisheries partnership would succeed to Mr. Rockom's interest in QS.

4. Sablefish landings reported on fish tickets G86-000644 and G86-000502 are not be eligible for IFQ credit.
5. The 7,472 pounds of sablefish from fish ticket G86-000572 and 6,531 pounds of sablefish from fish ticket G86-000512 were legally landed and would have been creditable for IFQ purposes if SYB's appeal had been timely filed.
6. The 14,003 pounds of sablefish recorded on fish tickets G86-000572 and G86-000512, which would have been creditable if the appeal had been timely filed, would be properly allocated 25 percent each to Mr. Hutchens, Mr. Copeland, and Mr. Carlson.
7. Mr. Rockom is ineligible to receive any QS.

DISPOSITION

The IAD, which denied SYB's request for additional sablefish QS, is **AFFIRMED**. This decision takes effect May 7, 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 at this office not later than 4:30 p.m. Alaska Time, on the tenth day after the date of this Decision, April 17, 1998. 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 the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the Decision pending a ruling on the motion or issuance of a Decision on Reconsideration.

Randall J. Moen
Appeals Officer

Edward H. Hein
Chief Appeals Officer