

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0045
)
JOHN D. PIPKIN,) DECISION
Appellant)
_____) March 10, 1998

STATEMENT OF THE CASE

Appellant John D. Pipkin filed a timely appeal of two Initial Administrative Determinations [IADs] issued by the Restricted Access Management Division [Division] on March 20, 1995. The IADs denied Mr. Pipkin's applications for Pacific halibut and sablefish quota share [QS] under the Individual Fishing Quota [IFQ] Program because he failed to show that he had owned or leased a vessel that made landings of halibut or sablefish during a QS qualifying year (1988, 1989, or 1990). Mr. Pipkin's interests are directly and adversely affected by the IADs. No hearing was held because there are no facts in dispute.

ISSUE

Whether Mr. Pipkin may receive QS for landings of halibut and sablefish that were not made during the QS qualifying years because of bad weather and the EXXON VALDEZ oil spill.

BACKGROUND

Mr. Pipkin's claim for QS was denied because he had not proven that he had owned or leased a vessel that made landings of halibut or sablefish during a QS qualifying year.

In his appeal, Mr. Pipkin claims that he would have landed halibut or sablefish during the QS qualifying period but for bad weather in 1988, the EXXON VALDEZ oil spill in 1989, and the bioremediation treatment of his village's [Chenega Bay] shorelines in 1990. He asks for 10,000 pounds of QS, split evenly between halibut and sablefish, to make up for his inability to fish during the QS qualifying years. Mr. Pipkin claims that the IFQ program is "bad" for his family and village. He writes:

"We have no permits in my village. I have 212 lb. to fish. When I fish, I give my fish to the people in my village; halibut, snapper, cod, bass, and ling cod. Now I will not be where I can help my friends and my family with the fish they need to live. I had to move so I can work to live and feed my family. ...When I cannot fish, you took my livelihood away from me. I need more fish to live on. This is my life; to fish this water where I live. Please would you help my family and let me work at what I know and love. To pass this on to my children. I feel like I have been betrayed by ones who did not look into our lives before passing laws that bring so much pain and

suffering. This law did not help the village where I live. There is no permit in Chenega Bay. ...You stopped a way of life just to give the big money to big people, and not to the people who need it to live. ...This I.F.Q. is bad. It will not help us."

DISCUSSION

To qualify for QS under the IFQ program, a person must have owned or leased a vessel that made landings of halibut or sablefish during the QS qualifying years of 1988, 1989, or 1990.¹ Mr. Pipkin argues that he would have qualified for QS had it not been for the EXXON VALDEZ oil spill, bad weather, and the oil spill bioremediation treatment. He further claims that the IFQ program is harmful to himself, his family, and his village.

This Office has ruled in several decisions that QS may only be issued on the basis of actual, and not hypothetical, landings.² The regulations governing the issuance of QS clearly require that actual landings be made, and no exceptions to this requirement were provided. The North Pacific Fishery Management Council [Council] expressly rejected QS on the basis of hardship or unavoidable circumstance. The Council considered the negative impact of the oil spill on commercial fishing, and that it was for that reason that it extended the QS qualifying period over a three year period, instead of a one year period. As a consequence, neither I, as an Appeals Officer, nor the Division, have the legal authority to issue QS for landings never made, for whatever reason, be it hardship, bad weather, an oil spill, or oil spill cleanup. Therefore, I conclude that QS may not be issued to Mr. Pipkin based on his estimated landings, notwithstanding any unfortunate circumstance and hardship that he may have experienced or endured during the QS qualifying period.

FINDINGS OF FACT

Mr. Pipkin did not make actual landings of halibut or sablefish during the QS qualifying years.

CONCLUSION OF LAW

Mr. Pipkin may not receive credit for QS for landings never made regardless of hardship, bad weather, the EXXON VALDEZ oil spill, or the bioremediation treatment of shorelines.

¹See, 50 C.F.R. § 679.40(a)(2), formerly 50 C.F.R. 676.20(a)(1).

²See, e.g., Kenneth M. Adams, Appeal No. 95-0004, decided March 22, 1995, *aff'd* April 19, 1995; William E. Crump, Appeal No. 95-0024, decided June 27, 1995, *aff'd* July 27, 1995; Jimmy D. Hutchens, Appeal No. 95-0094, decided June 28, 1995, *aff'd* January 18, 1996.

DISPOSITION

The IADs, both dated March 20, 1995, which found that Mr. Pipkin was not a qualified person for QS under the terms of the IFQ program, are AFFIRMED. This Decision takes effect April 9, 1998, unless by that date the Administrative Director orders the review of this Decision.

Any party, including the Division, 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, March 20, 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 the issuance of the Decision on Reconsideration.

Randall J. Moen
Appeals Officer