

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 95-0065  
)  
)  
STANLEY SAMUELSON, ) DECISION  
Appellant )  
)  
\_\_\_\_\_ ) January 14, 2000

STATEMENT OF THE CASE

Appellant Stanley Samuelson filed a timely appeal of an Initial Administrative Determination (IAD) issued by the Restricted Access Management (RAM) Program<sup>1</sup> on May 10, 1995. The IAD denied Mr. Samuelson's claim for additional halibut quota share (QS) under the Pacific halibut and sablefish Individual Fishing Quota (IFQ) program, on grounds that his QS was properly calculated, in the manner prescribed by the regulations of the IFQ program. Mr. Samuelson's interests are directly and adversely affected by the IAD. A hearing was not ordered 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.

50 C.F.R. § 679.43(g)(2) and (3).<sup>2</sup>

ISSUE

Is Mr. Samuelson entitled to issuance of additional halibut QS?

BACKGROUND

RAM issued 1,053 qualifying pounds of halibut QS to Mr. Samuelson, which amounted to approximately 113 pounds of halibut IFQ for the 1995 fishing season. On appeal, Mr. Samuelson claims additional halibut QS on grounds that he has been fishing halibut since 1967, and that the halibut QS that was assigned to him is not commercially viable. Mr. Samuelson did not produce state fish tickets or federal catch reports, or any other documentation to support his claim. RAM's official record, which is based on landing records of the state of Alaska Department of Fish & Game, does not

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

<sup>2</sup>Formerly, 50 C.F.R. § 679.25(g)(2) and (3). All IFQ regulations were renumbered, effective July 1, 1996. See, Fed. Reg. 31,270 (1996). The wording of the regulation in question was unchanged by the renumbering.

show that Mr. Samuelson is entitled to additional halibut QS. Mr. Samuelson claims that the IFQ program has created an IFQ elite, and that an award of 6,000 pounds of halibut QS would make it worthwhile for him to fish.

#### PRINCIPLES OF LAW

1. To qualify for halibut QS under the IFQ program, a person must have owned or leased a vessel that made at least one legal landing of halibut during any of the following years: 1988, 1989, or 1990. 50 C.F.R. § 679.40(a)(2) and 50 C.F.R. § 679.40(a)(3)(i).
2. A qualified person's halibut QS is calculated according to the person's highest total of legal landings of halibut made during any 5 years of the 7-year halibut QS base period, 1984-1990. 50 C.F.R. § 679.40(a)(4)(i).
3. To be considered a "legal landing" for purposes of issuance of QS, the halibut or sablefish must have been harvested with fixed gear and landed in compliance with state and federal regulations in effect at the time of the landing. 50 C.F.R. § 679.40(a)(3)(v)(B).
4. Evidence of a "legal landing" is limited to state fish tickets or federal catch reports. 50 C.F.R. § 679.40(a)(3)(v)(B).

#### DISCUSSION

RAM's official record shows that Mr. Samuelson is entitled to 1,053 pounds of halibut QS. While Mr. Samuelson claims that he has been fishing halibut since 1967, and that his current halibut QS is not commercially viable, the record on appeal is absent of state fish tickets or federal catch reports that shows Mr. Samuelson made (or is entitled to credit for) additional legal landings of halibut between 1984 and 1990. Without that proof, Mr. Samuelson cannot be issued additional halibut QS. The IFQ regulations do not provide for an exception to this rule; nor am I empowered to create one. As an Appeals Officer, I am bound by the requirements of the IFQ regulations, and I do not have the authority to create exceptions to fit individual cases.<sup>3</sup> The North Pacific Fishery Management Council voted in 1994 to not provide an exception to this rule, irrespective of an applicant's hardship or special circumstance. Therefore, I conclude that Mr. Samuelson cannot be issued additional halibut QS.

#### FINDING OF FACT

Mr. Samuelson did not own or lease a vessel that made additional legal landings of halibut between

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<sup>3</sup>See, George M. Ramos, Decision on Review, April 12, 1995.

1984 and 1990.

### CONCLUSIONS OF LAW

1. Additional halibut QS may only be issued to a qualified person for QS on the basis of legal landings of halibut, not hardship or special circumstance.
2. Mr. Samuelson is not entitled to issuance of additional halibut QS.

### DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on February 14, 2000, unless by that date the Regional Administrator orders the review of the decision.

Any party, including RAM, may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska Time, on the tenth day after the date of this Decision, January 24, 2000. A Motion for Reconsideration must be in writing, must allege one or more specific material materials 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.

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Randall J. Moen  
Appeals Officer

