

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of )  
 )  
MARVIN O. McPHERSON, )  
Appellant )  
\_\_\_\_\_ )  
Appeal No. 95-0071  
DECISION  
August 16, 1996.

STATEMENT OF THE CASE

Appellant Marvin O. McPherson filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on March 20, 1995. The IAD denied Mr. McPherson's application for halibut quota share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because he did not prove that he owned or leased a commercial fishing vessel upon which legal landings were made during any of the QS qualifying years, 1988, 1989, or 1990. On appeal Mr. McPherson requested a hearing, claiming the ownership of and landings from four commercial fishing vessels during the qualifying period.

Mr. McPherson 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 there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered. 50 C.F.R. 679.43(g)(2) and (3).<sup>1</sup>

ISSUE

Whether Mr. McPherson is a "qualified person"<sup>2</sup> for QS under the IFQ regulations.

BACKGROUND

On July 5, 1994, the Division received Mr. McPherson's request for application [RFA] for halibut and sablefish QS in which he claimed ownership of four commercial fishing vessels: the F/V TIGGER II, as of September, 1988; the F/V KIJIK SEA, as of May 15, 1989; the F/V LUDEE, as of September 1988; and the F/V AJAX, as of September 30, 1988. Thereafter, on or about October 24, 1994, the

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<sup>1</sup>Formerly 50 C.F.R. § 676.25(g)(2)-(3). 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.

<sup>2</sup>A "qualified person" under the IFQ regulations means a "person," as defined in § 679.2 [formally, § 676.11], that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year.

Division sent Mr. McPherson a QS Data Summary which showed that Mr. McPherson did not qualify for QS. According to the Summary, Mr. McPherson owned one vessel, the F/V TIGGER II, from May 30, 1990, through December 31, 1991, but had no landings of halibut or sablefish from the vessel during the QS qualifying period.<sup>3</sup>

Mr. McPherson was given 90 days to respond to the Summary. No reply was made, and on March 20, 1995, Mr. McPherson's request for QS was denied<sup>4</sup> for lack of evidence of ownership and landings.

On May 19, 1995, Mr. McPherson appealed his IAD. In support of his appeal, he submitted copies of bills of sale for the F/V LUDEE and the F/V AJAX, dated October 2, 1988. He also submitted a copy of vessel license registration renewal forms, dated 1995, for the four vessels noted on his RFA.

On June 27, 1996, this office ordered Mr. McPherson to provide proof of ownership of the four fishing vessels noted on his RFA, in the form of a U.S. Coast Guard abstract of title,<sup>5</sup> bill of sale, or certificate of registration; and to provide written proof of landings from the vessels in the form of fish tickets, State of Alaska Commercial Fisheries Entry Commission halibut data sheets, vessel log books, fish processor reports, etc. In response to the order, Mr. McPherson produced on August 12, 1996, various receipts and weight tickets for halibut landed, sold, or received during the months of 1988, 1989, and 1990. It was impossible to tell from the documents who caught, sold, or landed the halibut, the type of gear used to harvest the halibut, where and when the halibut was harvested or landed, and the name of the vessel used to harvest or land the halibut. At best, all that could be ascertained from the documents was the date, weight, type of fish, and the name of the person who either bought or received the halibut.

## DISCUSSION

To qualify for QS under the IFQ regulations, as implemented by the Division, a person must have owned or leased a vessel in which legal landings of halibut or sablefish were made during a QS qualifying year: 1988, 1989, or 1990. 50 C.F.R. § 679.40(a)(2).<sup>6</sup>

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<sup>3</sup>The Summary showed that landings were made from the F/V TIGGER II on May 5, 1991. The Division's official record also showed landings of halibut from the F/V LUDEE on September 9, 1988, and no landings from the F/V AJAX or the F/V KIJIK SEA during the qualifying period.

<sup>4</sup>See the IAD.

<sup>5</sup>On June 27, 1996, the U.S. Coast Guard informed this office that it did not have a record of title for the F/V LUDEE because of the vessel's size (smaller than 30 ft.).

<sup>6</sup>Formally, 50 C.F.R. § 676.20(a)(1).

According to the Division's records, Mr. McPherson owned only one vessel, the F/V TIGGER II, and made no landings from that vessel, during the QS qualifying period. Examination of the documents submitted on appeal by Mr. McPherson does nothing to counter the Division's record for it is impossible to tell from the information whether the halibut was legally landed.<sup>7</sup> The F/V TIGGER's name does not appear on any of the halibut receipts or tickets submitted by Mr. McPherson, nor does an IFQ area, port of landing, signature of the seller, gear card number, or gear type. Because of this, I find that Mr. McPherson may not receive QS based on his claim of ownership of the F/V TIGGER II, due to the absence of proof of legal landings from the vessel in a QS qualifying year.

Mr. McPherson also submitted bills of sale for the F/V LUDEE and the F/V AJAX, as of October 2, 1988, as proof of his claim for QS. Even if the bills of sale proved Mr. McPherson's ownership of the vessels,<sup>8</sup> ownership alone is not enough to qualify for QS; landings must also exist. The Division's official record shows that landings of halibut were made from the F/V LUDEE on September 9, 1988. I find, however, that the landings do not qualify Mr. McPherson for QS because the bill of sale for the F/V LUDEE shows that the landings occurred before Mr. McPherson's ownership of the vessel. The bill of sale shows that Mr. McPherson's ownership of the vessel did not begin until October 2, 1988, nearly one month after the date of the Division's record of landings made from the vessel. I further find Mr. McPherson may not qualify for QS based on a claim of ownership of the F/V AJAX or the KIJIK SEA. Landings must have been shown, and he has failed to do so, given the absence of landings in the Division's record, and the lack of proof of legal landings (as discussed above) in the documents submitted on appeal.

Given that the evidence on appeal shows an absence of landings from the F/V LUDEE at the time of Mr. McPherson's apparent ownership of the vessel, an absence of landings from the F/V AJAX and the F/V KIJIK SEA, and an absence of landings from the F/V TIGGER II during the qualifying period, I find that Mr. McPherson is not qualified to receive QS.

#### FINDINGS OF FACT

1. Mr. McPherson did not own or lease the F/V LUDEE at a time when landings of halibut or sablefish were made from the vessel.
2. No landings of halibut or sablefish were made from the F/V AJAX, the F/V KIJIK SEA, and the

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<sup>7</sup>To prove the halibut had been legally landed the documents would have had to show that the fish had been caught by fixed gear, in an IFQ regulated area, during a legal opening, by a legally licensed fisherman, commercially harvested, and actually landed. *See* 50 C.F.R. § 679.40(a)(2) and 679.40(a)(3)(A) and (B), [formally, 50 C.F.R. § 676.20(a)(1) and 676.20(a)(1)(v), respectively].

<sup>8</sup>It is not necessary to rule on the matter due to the lack of landings from the vessels.

F/V TIGGER II during the QS qualifying period.

#### CONCLUSION OF LAW

Mr. McPherson is not a qualified person for QS under the IFQ regulations.

#### DISPOSITION

The Division's IAD, which found that Mr. McPherson is not a qualified person for QS, is AFFIRMED. This decision takes effect on September 16, 1996, unless by that date the Regional Director orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 10 days after the date of this decision, August 16, 1996.

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Randall J. Moen  
Appeals Officer