

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0115
)	
LEONARD LEACH,)	DECISION
Appellant)	
_____)	May 6, 1998

STATEMENT OF THE CASE

Appellant Leonard Leach filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program¹ [RAM] on May 10, 1995. The IAD denied his application for additional halibut quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program because he did not have legal proof that he had landed the fish, and because RAM does not have authority to issue QS for landings never made on the basis of hardship or special circumstances. Mr. Leach's interests are directly and adversely affected by the IAD. No hearing was held because the relevant facts are not in dispute.

ISSUE

Whether Mr. Leach may receive additional QS for halibut harvested aboard a vessel lost at sea and never landed.

BACKGROUND

Mr. Leach claims he should receive additional qualifying pounds of halibut QS, based on an estimated loss of 20,000-plus pounds of halibut harvested aboard his vessel, the F/V TRISH, which was lost at sea on June 22, 1988. RAM denied Mr. Leach's claim because he did not have the requisite proof that he legally landed the fish (in the form of state fish tickets or federal catch reports), and because RAM determined that it did not have the authority to issue QS solely on the basis of hardship or special circumstance.

On appeal, Mr. Leach submitted several affidavits and two newspaper articles in support of his claim. He also submitted a letter from E.C. Phillips and Son, Inc., and copies of 1992, 1993, and 1994 Alaska State fish tickets, as evidence of his ability to catch the amount of fish claimed.

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

DISCUSSION

To qualify for QS under the regulations of the IFQ program, a person must have owned or leased a vessel that made legal landings of halibut or sablefish during a QS qualifying year.² To be considered a “legal landing,” the fish must have been harvested with fixed gear and landed in compliance with the state and federal regulations in effect at the time of the landing.³

Mr. Leach claims additional QS on the basis that the fish were harvested aboard a vessel lost at sea. But in order to obtain credit for the fish for IFQ purposes, the fish must have been landed. The term “landing” is defined as “offloading fish.”⁴ In this instance, Mr. Leach’s fish were not offloaded; they went down with the vessel. Even if Mr. Leach’s halibut were legally harvested, they were not legally landed and, therefore, cannot be credited for IFQ purposes.

Unfortunately for Mr. Leach, there is no applicable exception to the rule requiring that fish be landed, i.e., offloaded, from the vessel on which they were harvested.⁵ This Office has denied relief to a number of appellants seeking QS on the basis of landings that they claimed would have been made but for an unavoidable circumstance or hardship.⁶ We have ruled in these appeals that RAM has no authority to allocate qualifying pounds that are not based on actual landings. We did so because the North Pacific Fishery Management Council expressly rejected allowing QS on the basis of hardship or unavoidable circumstance.⁷ The Council determined that providing a three-year qualifying period and allowing applicants to select their best five years of fishing during the base years was sufficient to

²50 C.F.R. § 679.40(a)(2).

³50 C.F.R. § 679.40(a)(3)(v)(A).

⁴50 C.F.R. § 679.2.

⁵The only exception to the offloading requirement would be fish harvested and processed on a catcher/processor vessel. Technically, such fish are not “landed” until they are offloaded from the catcher/processor. As a practical matter, however, RAM considers such fish to be landed for IFQ purposes when they are processed. Thus, RAM accepts such fish reported on a Weekly Production Report as having been legally landed before, or regardless of whether, they are offloaded from the vessel.

⁶*See*, Kenneth M. Adams, Appeal No. 95-0004, decided March 22, 1995, *effective* April 19, 1995; William E. Crump, Appeal No. 95-0024, decided June 27, 1995, *effective* July 27, 1995; Jimmy D. Hutchens, Appeal No. 95-0094, decided June 28, 1995, *aff'd* January 1, 1996; and Michael C. Hatten, Appeal No. 95-0136, decided January 30, 1996, *aff'd* January 18, 1996. (All of these cases deal with the EXXON VALDEZ oil spill of 1989, in which Appellants argued that they would have had landings, but for the spill).

⁷The Council made the decision at its September 28-October 5, 1994, meeting.

compensate applicants whose catch [or landings] had been reduced as a result of circumstances beyond their control, and that no additional hardship provisions would be considered for the IFQ program.

FINDING OF FACT

Mr. Leach's estimated 20,000-plus pounds of halibut that he claims were lost with the sinking of his vessel, the F/V TRISH, on June 22, 1988, were never landed, i.e., offloaded, from the vessel.

CONCLUSIONS OF LAW

1. Mr. Leach's fish were not "legally landed" because they were not landed.
2. Halibut that were legally harvested, but not landed, cannot be credited for IFQ purposes in spite of hardship or unavoidable circumstance that prevented the landing.

DISPOSITION

The IAD denying Mr. Leach's application for additional QS for halibut harvested aboard a vessel lost at sea is AFFIRMED. This Decision takes effect June 5, 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 May 18, 1998, the tenth day after the date of this Decision. 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 this motion.

Randall J. Moen
Appeals Officer