

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0142
)
RICHARD BRIAN CATTERALL,) DECISION
Appellant)
_____) January 26, 1999

STATEMENT OF THE CASE

Appellant Richard Brian Catterall filed a timely appeal of an Initial Administrative Determination [IAD] issued on September 14, 1995, by the Restricted Access Management [RAM] program.¹ His request for halibut quota share [QS] under the Individual Fishing Quota [IFQ] program was denied because RAM had no evidence that he owned or leased a vessel that made qualifying landings of halibut. Mr. Catterall's interests are directly and adversely affected by the IAD. No hearing was held because the relevant facts are not in dispute.

ISSUE

Does Mr. Catterall qualify for an initial issuance of halibut QS?

BACKGROUND

RAM denied Mr. Catterall's request for halibut QS because its records did not show that qualifying halibut landings were made from his vessel, the F/V MISS LAURA, and because it does not have the authority to issue QS to compensate him for fishing opportunities missed due to the mechanical failure of the vessel in 1990.

On appeal, Mr. Catterall claims that he made halibut landings from the F/V MISS LAURA in 1986, 1987, and 1988; and that he would have made halibut landings in 1990, had it not been for the mechanical failure of his vessel. Mr. Catterall asserts that he was denied halibut QS because he did not make a claim for halibut QS on his Request for Application for Quota Share [RFA].

In support of his appeal, Mr. Catterall produced a Washington State fish ticket for halibut landings in 1988; Alaska State fish tickets for halibut landings in 1986 and 1987; and receipts for the mechanical repair of the F/V MISS LAURA in 1990. The Washington State fish ticket was rejected by RAM because it shows landings of halibut harvested in Washington state waters. Mr. Catterall admits in his

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

appeal that the 1988 halibut landings were harvested in IPHC² regulatory area 2A, which consists of all waters off the coast of Washington, Oregon, and California.

DISCUSSION

To qualify for QS under the regulations of the IFQ program, a person must have owned or leased a vessel, from which legal landings of halibut or sablefish were made and harvested with fixed gear from an IFQ regulatory area, during the QS qualifying years (1988, 1989, or 1990).³ An "IFQ regulatory area" consists of IPHC regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E for the management of Pacific halibut.⁴

Mr. Catterall has not presented sufficient proof that he made landings of halibut that qualify him for halibut QS. The landings on his Alaska state fish tickets for 1986 and 1987 are outside of the QS qualifying period of 1988, 1989, or 1990. The landings on his Washington state fish ticket for 1988 were harvested in IPHC regulatory area 2A in Washington state waters, which is a non-IFQ regulatory area for purposes of QS. And, the landings in 1990 that Mr. Catterall might have made but for the mechanical failure of his vessel, cannot be given IFQ credit because, as this Office has ruled in several decisions, QS must be based on actual, not hypothetical landings, irrespective of a person's hardship or circumstance.⁵ There is no other evidence in the record showing that Mr. Catterall made landings of halibut during the QS qualifying years.

Mr. Catterall further claims he was denied halibut QS because he did not make a claim for QS on a formal RFA. It is true that the IAD discussed the fact that Mr. Catterall did not request an application for halibut QS and, consequently, RAM did not send him one. The IAD states that Mr. Catterall did not mention that he was requesting halibut QS until October 6, 1994, when he wrote a letter to RAM. Notwithstanding Mr. Catterall's failure to make a formal request for halibut QS, it is clear from the IAD that his application for halibut QS was denied because RAM had no record that Mr. Catterall owned or leased a vessel that had made halibut landings during a qualifying year, nor did Mr. Catterall supply any such evidence. Thus, RAM considered whether Mr. Catterall was qualified for halibut QS *despite* the lack of a timely application from him.

²The International Pacific Halibut Commission.

³*See*, 50 C.F.R. § 679.40(a)(2); formerly 50 C.F.R. 676.20(a)(1).

⁴*See*, the definition of "IFQ regulatory area" in 50 C.F.R. § 679.2.

⁵*See, e.g., Kenneth M. Adams*, Appeal No. 95-0004, decided March 22, 1995, *effective* April 15, 1995; and *William E. Crump*, Appeal No. 95-0024, decided June 27, 1995, *effective* July 27, 1995. The North Pacific Fishery Management Council voted in 1994 to not provide an exception to the rule requiring actual landings, irrespective of a person's hardship or circumstance.

Furthermore, the IAD makes clear that RAM considered whether Mr. Catterall could be qualified for halibut QS as a result of having qualified for sablefish QS — an argument that he did not make. RAM rejected the argument and determined that an applicant for QS must qualify separately for each species. In Patrick Selfridge,⁶ we confirmed that this was the correct interpretation of the regulations governing qualification for QS.

Because Mr. Catterall has not presented sufficient evidence of halibut landings made from a vessel he owned or leased during the QS qualifying years, I conclude that he is ineligible for an initial issuance of halibut QS.

FINDINGS OF FACT

1. Mr. Catterall's 1988 Washington State fish ticket is for halibut harvested in a non-IFQ regulatory area.
2. Mr. Catterall's 1986 and 1987 Alaska State fish tickets are for landings of halibut made outside of the QS qualifying years.
3. Mr. Catterall was not denied halibut QS because he did not apply for halibut QS in his RFA, but because RAM determined that he had made no landings of halibut during the QS qualifying years, and that he could not be qualified for halibut QS as a result of having qualified for sablefish QS.
4. There is no other evidence in the record showing that Mr. Catterall made landings of halibut during the QS qualifying years.

CONCLUSIONS OF LAW

1. An applicant cannot receive QS for halibut harvested in a non-IFQ regulatory area.
2. An applicant cannot use landings of halibut made outside of the QS qualifying years to qualify for QS.
3. An applicant cannot receive QS for halibut landings that were never made because of the mechanical failure of a vessel.
4. Mr. Catterall has not presented sufficient evidence of landings of halibut that qualify him for QS.

⁶Appeal No. 95-0023, September 3, 1998.

5. An applicant for QS must qualify separately for each species.
6. Mr. Catterall is ineligible for an initial issuance of halibut QS.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on February 25, 1999, 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 February 5, 1999, the tenth day after the date of this Decision. A Motion for Reconsideration must be in writing, must specify one or more 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.

Randall J. Moen
Appeals Officer