

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 96-0067  
)  
MARK C. LEVENSON, )  
Appellant ) DECISION ON RECONSIDERATION  
)  
\_\_\_\_\_) June 29, 2000

STATEMENT OF THE CASE

On appeal, Mr. Levenson claimed that RAM should have debited his 1995 IFQ account based on the amounts recorded on his state fish tickets, and that his 1996 IFQ account should be credited 846 pounds.

In the Decision issued on November 5, 1999, we ruled that RAM correctly debited Mr. Levenson's 1995 IFQ account, based on the amounts recorded on the NMFS landings reports. We also concluded that RAM correctly adjusted Mr. Levenson's 1996 IFQ account for area 3B when it deducted 212 pounds, and that it correctly adjusted Mr. Levenson's 1996 IFQ account for area 3A when it added 358 pounds.

On Reconsideration, Mr. Levenson claims that the amounts recorded on the NMFS landings reports are incorrect because the registered buyer (Tyson Enterprises Seafoods, Inc.) did not report the correct weight of the fish to NMFS. As a result, he claims that his IFQ account should be adjusted to reflect the amounts recorded on his state fish tickets, for a combined credit of 864 pounds for IFQ regulatory areas 3B and 3A.

ISSUE

Is Mr. Levenson entitled to have his IFQ account adjusted to reflect the amounts recorded on his state fish tickets?

DISCUSSION

The standard for reconsideration of a decision on appeal is whether the requesting party has raised a material matter of fact or law that the Appeals Officer overlooked or misunderstood.

In the Decision, we found that the amounts recorded on the NMFS landings reports were correct. We made that finding based on the evidence in the record.

On reconsideration, Mr. Levenson now claims that the amounts recorded on the NMFS landings

reports are incorrect because the registered buyer did not report the correct weight of the fish to NMFS. Mr. Levenson's assertion is the only evidence of his claim. Mr. Levenson did not claim or produce evidence on appeal that the registered buyer did not report the correct weight of the fish to NMFS. Nor does evidence of that claim exist in the appeals record. Consequently, the Appeals Officer could not have overlooked evidence in the appeals record that the registered buyer reported the incorrect weight of the fish to NMFS. Therefore, Mr. Levenson's claim does not meet the standard for reconsideration.

I conclude that Mr. Levenson's IFQ account may not be adjusted in this case. I note that even if Mr. Levenson's claim had met the standard for reconsideration, his assertion alone on reconsideration would be insufficient to show that the NMFS landings reports are incorrect.

#### FINDINGS OF FACT

1. Mr. Levenson did not raise a claim or produce evidence on appeal that the registered buyer did not report the correct weight of the fish to NMFS.
2. The appeals record does not show that the registered buyer reported the incorrect weight of the fish to NMFS.
3. The Appeals Officer did not overlook evidence in the appeals record that the registered buyer reported the incorrect weight of the fish to NMFS.

#### CONCLUSIONS OF LAW

1. Mr. Levenson's claim that the registered buyer did not report the correct weight of the fish to NMFS does not meet the standard for reconsideration
2. Mr. Levenson is not entitled to have his IFQ account adjusted to reflect the weight of halibut landings recorded on his state fish tickets.

#### DISPOSITION

The Decision in this Appeal is AFFIRMED. The Decision on Reconsideration incorporates the Decision by reference. The Decision on Reconsideration takes effect July 31, 2000, unless by that date the Regional Administrator orders review of the Decision on Reconsideration.

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Randall J. Moen

Appeals Officer