

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 98-0003
)	
STANLEY J. SCHONES,)	DECISION
Appellant)	
_____)	July 19, 2000

STATEMENT OF THE CASE

Appellant Stanley J. Schones filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program [RAM] on January 16, 1998. The IAD denied Mr. Schones' request to have his halibut quota share [QS] reassigned from vessel category C to vessel category B under the Individual Fishing Quota [IFQ] Program for Pacific halibut and sablefish.

Mr. Schones has adequately shown that his interests are directly and adversely affected by the IAD. We did not order a hearing 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).¹

ISSUES

1. Did Mr. Schones file a timely request to have his halibut QS reassigned to vessel category B?
2. Is Mr. Schones entitled to have his halibut QS reassigned to vessel category B?

BACKGROUND

When Mr. Schones applied for halibut QS, he did so only in his name.² RAM assigned his halibut QS to vessel category C because its Official Record shows that Mr. Schones owned and landed halibut from the F/V EMERALD SEA, in 1991. The F/V EMERALD SEA is a category C vessel for purposes of assignment of QS to a vessel category. The category C assignment enables Mr. Schones to harvest his halibut IFQ on vessels with an LOA of 60 feet or less.³ The

¹Formerly, 50 C.F.R. § 676.25(g). All IFQ regulations were renumbered, effective July 1, 1996. See 61 Fed. Reg. 31,270 (1996). The wording of the regulations in question was unchanged by the renumbering.

²See Mr. Schones' request for application for QS (RFA). The record does not show that Mr. Schones ever claimed that he and his wife, Mrs. Schones, owned the F/V MISS BERDIE, when he applied for QS.

³See 50 C.F.R. § 679.40(a)(5)(ii)(C).

length overall (LOA)⁴ of the F/V EMERALD SEA is 58 feet.

Approximately three years after he was issued halibut QS, Mr. Schones asked RAM to reassign his halibut QS to vessel category B, based on his use and ownership of the F/V MISS BERDIE. The F/V MISS BERDIE is a category B vessel for purposes of assignment of QS to a vessel category. RAM's Official Record shows that Mr. Schones owned and landed halibut from the F/V MISS BERDIE in 1990.⁵ The reassignment to category B would enable Mr. Schones to harvest his halibut IFQ on a vessel of any length.⁶ The LOA of the F/V MISS BERDIE is 83 feet.

RAM denied Mr. Schones' request in a written IAD. RAM denied the request because it was untimely made, and because its Official Record shows that the F/V EMERALD SEA was the most recent vessel owned and used by Mr. Schones to land halibut between January 1, 1988, and September 25, 1991.

Mr. Schones appealed the written IAD within 60 days. On appeal, Mr. Schones claims that the F/V MISS BERDIE was the most recent vessel owned and used by him to land halibut between January 1, 1988, and September 25, 1991. Mr. Schones produced U.S. Coast Guard abstracts of title for the F/V MISS BERDIE and the F/V EMERALD SEA, which show that Mr. and Mrs. Schones owned the F/V MISS BERDIE (50% each) between September 25, 1989, and July 30, 1991,⁷ and that S.R.S., Inc., owned the F/V EMERALD SEA in 1990 and 1991.

At the time that RAM issued QS to Mr. Schones, RAM's Official Record did not include vessel ownership information from U.S. Coast Guard abstracts of title.

PRINCIPLES OF LAW

1. An appeal of an IAD under the IFQ program must be filed within 60 days after the date of the IAD. 50 C.F.R. § 679.43(d)
2. A qualified person's QS is assigned to one of four vessel categories: A, B, C, and D. The assignment is based on the product type landed and the length overall of vessels used by the qualified person to make legal landings of halibut or sablefish in the person's most recent year of participation. 50 C.F.R. § 679.40(a)(5)(i)

⁴The "LOA" of a vessel is defined in 50 C.F.R. § 679.2.

⁵RAM's records show that 1990 was the only year (between January 1, 1988, and September 25, 1991) that Mr. Schones owned, and landed halibut from, the F/V MISS BERDIE.

⁶See 50 C.F.R. § 679.40(a)(5)(ii)(B).

⁷The abstract of title for the F/V MISS BERDIE also shows that Miss BERDIE, Inc., owned the vessel between July 24, 1991, and July 7, 1998.

3. The “most recent year of participation” is the qualified person’s last year of fishing for halibut or sablefish between January 1, 1988, and September 25, 1991. 50 C.F.R. § 679.40(a)(5)(i)
4. A qualified person’s QS must be assigned to category B, if at any time during his/her most recent year of participation, that person’s vessel was greater than 60 feet. and did not process any groundfish or halibut caught with fixed gear. 50 C.F.R. § 679.40(a)(5)(iii)
5. A qualified person’s halibut QS must be assigned to vessel category C if, at any time during his/her most recent year of participation, that person’s vessel was less than or equal to 60 ft and did not process any sablefish or halibut caught with fixed gear. 50 C.F.R. § 679.40(a)(5)(v)(A)
6. A qualified person for QS is a citizen of the United States, or a corporation, partnership, association, or other entity. 50 C.F.R. § 679.2
7. The best evidence of vessel ownership, in order of priority, is a U.S. Coast Guard abstract of title, a certificate of registration determinative of vessel ownership, and a bill of sale. 50 C.F.R. § 679.40(a)(3)(ii)

DISCUSSION

1. Did Mr. Schones file a timely request to have his halibut QS reassigned to vessel category B?

While we have ruled that an applicant for QS must apply for QS in a timely manner,⁸ we have never ruled that a qualified person for QS must apply for a vessel category change in timely manner. Nor do we do so in this appeal. The IFQ regulations do not impose a time deadline to request a vessel category change on a qualified person for QS. Nor is there any practical reason to do so. A request to change an applicant’s vessel category does not by itself negatively affect the amount of QS issued or the value of another issuee’s QS.

Given that Mr. Schones filed his appeal within 60 days of the IAD, I conclude that Mr. Schones’ request to have his halibut QS reassigned to vessel category B may be considered on appeal.

2. Is Mr. Schones entitled to have his halibut QS reassigned to vessel category B?

Because the abstract of title is superior to RAM’s Official Record, and because S.R.S. Inc. is a corporation and a distinct person under the IFQ program, I find that S.R.S., Inc., owned the F/V EMERALD SEA in 1990 or 1991, and that Mr. Schones owned and landed halibut from the F/V MISS BERDIE in 1990. Therefore, the F/V MISS BERDIE was the most recent vessel owned and used by Mr. Schones to land halibut between January 1, 1988, and September 25, 1991.

⁸See, e.g., Tiger, Inc., Appeal No. 95-0100, November 17, 1995.

Because the F/V MISS BERDIE is an 83-foot vessel, I conclude that Mr. Scones is entitled to have his halibut QS reassigned to vessel category B.⁹

FINDINGS OF FACT

1. Mr. Schones filed his appeal within 60 days of the written IAD.
2. S.R.S., Inc., owned the F/V EMERALD SEA in 1990 and 1991.
3. Mr. Schones owned and landed halibut from the F/V MISS BERDIE in 1990.
4. The F/V MISS BERDIE was the most recent vessel owned and used by Mr. Schones to land halibut between January 1, 1988 and September 25, 1991.
5. The LOA of the F/V MISS BERDIE is 83 feet.

CONCLUSIONS OF LAW

1. The IFQ regulations do not impose a time deadline on an applicant for QS to request a vessel category change.
2. Mr. Schones' request to change the assignment of his halibut QS to vessel category B may be considered on appeal.
3. S.R.S., Inc., is a corporation, and a distinct person for purposes of assignment of its QS to a vessel category.
4. The F/V MISS BERDIE is a category B vessel for purposes of assignment of Mr. Schones' halibut QS to a vessel category.
5. Mr. Schones is entitled to have his halibut QS reassigned to vessel category B.

DISPOSITION AND ORDER

The IAD that is the subject of this appeal is VACATED. RAM is ORDERED to amend the Official Record to show that Mr. and Mrs. Schones owned the F/V MISS BERDIE (50% each) between September 25, 1989, and July 30, 1991,¹⁰ and that S.R.S., Inc., owned the F/V

⁹Even though the abstract of title shows that Mr. Schones was only a 50% owner of the F/V MISS BERDIE during part of the QS qualifying period, I will not address whether Mr. Schones is entitled to all of the halibut QS associated with the vessel because that is not an issue on appeal.

¹⁰The abstract of title for the F/V MISS BERDIE also shows that Miss Berdie, Inc., owned the vessel between July 24, 1991, and July 7, 1998.

EMERALD SEA in 1990 and 1991. RAM is further ORDERED to reassign Mr. Schones' halibut QS to vessel category B.

This Decision takes effect on August 18, 2000, 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 July 31, 2000, 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