

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
RESTRICTED ACCESS MANAGEMENT DIVISION

In re Application of) Appeal No. 94-0001
)
KEITH A. BUEHNER,) DECISION
Appellant)
) September 26, 1994
_____)

Appellant Keith A. Buehner appeals an initial administrative determination of the Restricted Access Management Division [Division], dated August 22, 1994, which denied his application for Quota Share [QS] under the halibut and sablefish Individual Fishing Quota [IFQ] program because it was not filed with the Division by the filing deadline, July 15, 1994. Appellant states that this determination has a direct and adverse effect on him because it prevents him from participating in the halibut fishery, which is the sole source of income for him and his dependents. He asks that the determination be reversed. His appeal was timely filed on September 22, 1994.

ISSUE

Whether the Division should have accepted Appellant's Application as timely filed.

FINDINGS

1. Appellant's file shows that he completed and signed a Request For Application For Quota Share [RFA] form and dated it May 1, 1994. The form was mailed from Sitka, Alaska, and postmarked July 19, 1994. It was received by the Division on July 20, 1994, five days after the filing deadline prescribed by the National Marine Fisheries Service. (See "Notification of application period" at 59 F.R. 701-702 [Jan. 6, 1994]: "Applications must be received during the application period beginning January 17, 1994, and ending at close of business on July 15, 1994. . . . Applications for initial allocation of QS received after the close of business on July 15, 1994, will not be considered.")
2. Despite the above admonition, the Division, as a matter of policy, accepted as a timely filed application any completed, original RFA that was received at the Division's office by the end of the application period. (See Attachment A, Letter from Philip J. Smith, dated July, 1994.) Ultimately, the Division accepted as timely filed any completed, original RFA that was clearly postmarked by July 15, 1994, though received after that date.

3. Appellant states in his appeal that he was unable to file the RFA by the filing deadline because of circumstances beyond his control. Specifically, Appellant states that as a result of a separation (presumably a marital or relationship separation) he was denied access to "important personal and business papers, including the pre-application for Quota Share and supporting documents." Appellant, however, could have obtained another blank RFA form from the Division or at numerous other offices around the state, including National Marine Fisheries Services enforcement offices, and offices of the Alaska Department of Fish and Game, and offices of the Alaska Commercial Fisheries Entry Commission, among others. In addition, all the information that Appellant supplied in his RFA was either within his personal knowledge or was readily obtainable from public agencies and, therefore, could have been supplied by Appellant without recourse to any records or papers to which he was denied access because of the separation.

4. Appellant does not claim or present any evidence that he was prevented from submitting the RFA within the filing deadline by any negligence or fault of the Division, and a review of the Division's file and database information pertaining to Appellant's application discloses no such negligence or fault.

DISPOSITION

The Division's initial administrative determination denying Appellant's application as untimely filed is AFFIRMED. This decision takes effect on November 30, 1994, unless, by that date, Appellant files an appeal with the Regional Director or the Regional Director orders review of the decision.

DECIDED this 26th day of September, 1994, at Juneau, Alaska.

Edward H. Hein
Appeals Officer

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