

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
RESTRICTED ACCESS MANAGEMENT DIVISION

In re Application of)
)
JIMMY TONY,)
Appellant)
)
)
)
)

Appeal No. 94-0004

DECISION

December 23, 1994

Appellant Jimmy Tony appeals an initial administrative determination of the Restricted Access Management Division [Division], dated September 12, 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 submitted a handwritten letter in support of his appeal, which I find shows that the Division's determination has a direct and adverse effect on him.

ISSUE

Whether the Appellant's Application should be considered by NMFS as having been timely filed.

BACKGROUND AND DISCUSSION

Appellant's Request for Application (RFA) was neither received in the Restricted Access Management (RAM) Division nor postmarked by the deadline for filing of July 15, 1994. The RFA was postmarked on July 27, and was received in the Division office on August 4, 1994. Appellant states that he delayed sending in the RFA because he was looking for fish tickets that would show qualifying landings during one or more of the base years.

Under the regulations, an application (or RFA) received after the deadline "will not be considered." (59 Fed. Reg. 701 at 702 (1994)) The Appellant does not claim or present any evidence that he was prevented from submitting the application or 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 fault.

The Appellant did not specifically request a hearing in connection with his appeal, although he did indicate that he could be reached by phone if there were any questions concerning his appeal. The only factual claim made in connection with the late filing was that the Appellant delayed sending in the RFA because he was looking for fish tickets showing his landings of fish during one or more of the qualifying years. This claim does not justify a hearing because, even if

proven, the fact that the Appellant was delayed while looking for his fish tickets would not be a grounds for allowing the application to be considered.

I conclude that the Appellant has stated no grounds for obtaining relief that would be consistent with the basic meaning of the rule imposing July 15, 1994 as the deadline for applications under the IFQ Program.

DISPOSITION

The Division's initial administrative determination denying Appellant's application as untimely filed is AFFIRMED. This decision takes effect on March 2, 1995, unless, by that date, Appellant files an appeal with the Regional Director or the Regional Director orders review of the decision.

By letter transmitting this Decision to the Appellant, this Appeals Officer is notifying the Appellant that even if he has not established eligibility to receive initial Quota Share under the IFQ Program, he may be able to qualify to fish for halibut in 1995 under the Community Development Quota (CDQ) Program for his local area. The letter (attached hereto and incorporated by reference as part of this Decision) also provides the names and telephone numbers of the persons suggested by that local organization as able to help the Applicant determine whether he qualifies under the local CDQ Program.

Finally, for the Appellant's convenience, the letter includes the portions of the regulations dealing with where, when and how to file an appeal of this decision with the Regional Director.

DECIDED this 23rd day of December, 1994, at Juneau, Alaska.

Kenneth R. Clark
Appeals Officer