

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0024
)	
WILLIAM E. CRUMP,)	DECISION
Appellant)	
_____)	June 27, 1995

STATEMENT OF THE CASE

Appellant William Crump appeals an initial administrative determination ["IAD"] of the Restricted Access Management Division ["Division"], dated March 20, 1995, which denied his application for halibut Quota Share ["QS"] under the halibut and sablefish Individual Fishing Quota ["IFQ"] program. The Division found that the Appellant was not a "qualified person" under 50 C.F.R. §676.20(a)(1) because there was no evidence that he had made any halibut landings during the qualifying years of 1988 through 1990. The appeal was timely filed and the Appellant had adequately alleged that his interests are directly and adversely affected by the IAD.

ISSUE

Whether NMFS should consider an applicant as a qualified person on the basis of landings that might have been made but for the EXXON VALDEZ oil spill.

BACKGROUND AND DISCUSSION

To be eligible for an initial issuance of halibut QS, an applicant must be a person who owned or leased a vessel that made at least one legal landing of halibut during the three-year qualifying period, 1988 through 1990. 50 C.F.R. §676.20(a)(1). The Appellant was the registered owner of two fishing vessels from 1989 through 1991. He acknowledges that he made no landings aboard either vessel during the qualifying period. Appellant stated in his appeal that he had fished for halibut in 1986 and 1987 with another vessel that he owned at that time. From the fall of 1988 until the spring of 1989, the Appellant was having a new boat built with the intention of fishing for halibut in 1989. He did not fish in 1989, however, because of the EXXON VALDEZ oil spill. Subsequently, he attended school in order to obtain a U.S. Coast Guard master's license in hopes of being hired by Exxon Corporation to assist with oil spill cleanup operations in the spring of 1990. That job did not materialize, and the Appellant did not return to halibut fishing until 1991.

The Appellant acknowledges that he had no landings during the qualifying period and therefore does not meet the eligibility requirements set out in the IFQ regulation. He argues, however, that he should be considered a qualified person because he made deliveries of halibut in 1986, 1987, and 1991, and because he would have landed halibut in the intervening years but for the oil spill.

The issue raised in this appeal was considered in Kenneth M. Adams¹. The appellant in that case was a qualified person who had been awarded QS. He sought credit for additional pounds of halibut that he estimated he would have landed in 1989 but for the EXXON VALDEZ oil spill.

This office agreed with the Division's determination that the Division has no authority to allocate qualifying pounds that are not based on actual landings. Directly addressing the oil spill situation, Adams noted that the North Pacific Fishery Management Council had considered the negative impact of the spill on commercial fishing and had, for that reason, recommended a three-year qualifying period, which included the year before and the year after the spill. "The Council revisited this question during its meetings in 1994, but voted to retain the provisions of the current regulations without modification to further accommodate 'hardship' situations."²

The reasoning and the authority relied upon in Adams apply equally to the instant appeal. The Appellant here seeks to use hypothetical landings as the basis of eligibility for the IFQ program. The IFQ regulations do not allow such landings to be used for purposes of establishing eligibility or additional qualifying pounds.

DISPOSITION

The Division's initial administrative determination, which found that the Appellant was not a qualified person, is AFFIRMED. This decision takes effect July 27, 1995, unless by that date the Regional Director orders review of the decision.

John G. Gissberg
Appeals Officer

I concur in the factual findings of this decision and I have reviewed this decision to ensure compliance with applicable laws, regulations, and agency policies, and consistency with other appeals decisions of this office.

Edward H. Hein

¹Appeal No. 95-0004, decided March 22, 1995.

²*Id.* at 2.

Chief Appeals Officer