

between Chignik, Anchorage and Kodiak.

In December, 1991, the North Pacific Fishery Management Council decided to adopt the IFQ program for halibut and sablefish.³ On December 3, 1992, proposed regulations for the IFQ program were published in the Federal Register. 57 Fed. Reg. 47,234 (1992). On November 9, 1993, final IFQ rules were published in the Federal Register. 58 Fed. Reg. 59,375 (1993). On January 6, 1994, the first official notice of the application period and deadline for filing applications under the IFQ program was published in the Federal Register. 59 Fed. Reg. 701 (1994). This notice was the "first legally sufficient notice of the application filing deadline. . ."⁴ In addition to publication in the Federal Register, the Division carried out an extensive campaign to publicize the IFQ Program. This effort included news releases, public service announcements, paid advertisements, media interviews, public information workshops, and presentations at public meetings.

In addition to publication in the Federal Register and its extensive publicity campaign, the Division also sent individualized notice of the program and RFA forms to many persons it believed might be eligible to apply for and receive QS. Those were persons listed in the Division's database as owners of vessels that made legal landings during the relevant years. Of that group, persons whose current addresses were in the Division's database would be likely to receive individualized notice of the program and the RFA form. While the Division attempted to give individualized notice to the likely eligible persons, its computer records prior to receipt of applications did not reflect those who were eligible based on leases of vessels or successors in interest to owners and lessees. Thus, large numbers of persons who submitted applications demonstrating their eligibility to receive QS never received individualized notices of the program.

DISCUSSION

The regulations implementing the IFQ program provide that an application received after July 15, 1994, "will not be considered."⁵ The regulations do not require the Division to give individualized notice to every person who might be eligible to receive QS. Although the Division made extensive efforts to reach those who might be eligible, the regulations do not impose on the Division the duty to launch an investigation when mailings sent to last known addresses are returned undeliverable. Mr. Pedersen does not contend that the Division failed to comply with the regulations governing the IFQ program,

³*Newsletter* (North Pacific Fishery Management Council) No. 6-91, December 19, 1991.

⁴John T. Coyne, Appeal No. 94-0012, May 24, 1996 (Decision on Reconsideration).

⁵59 Fed. Reg. 701, at 702 (1994).

and I must presume the legal validity of the agency's own duly promulgated regulations.⁶

Mr. Pedersen does not contend that the Division received his RFA or that he mailed or telefaxed his RFA by July 15, 1994. Accordingly, the only way the Division could accept the RFA is if the filing period is equitably tolled.⁷ Mr. Pedersen has not, however, alleged that he suffered any disability or circumstance beyond his control that effectively prevented him from timely applying for the IFQ program. Mr. Pedersen's appeal is apparently based solely on the fact that he did not receive individualized notice of the application and an RFA in the mail. However, equitable tolling of the filing deadline is inapplicable when the appellant can show only that he did not receive individualized notice of the program and an RFA form.⁸

FINDINGS OF FACT

1. Arthur B. Pedersen, Sr.'s request for application was mailed to the Division in an envelope postmarked February 7, 1995.
2. Arthur B. Pedersen, Sr. did not receive individualized notice of the application procedure or an RFA form prior to the July 15, 1994 deadline.
3. Arthur B. Pedersen, Sr. did not suffer any disability or extraordinary circumstance that prevented him from timely applying for the IFQ program.

CONCLUSIONS OF LAW

1. The doctrine of equitable tolling does not apply to the IFQ application period in this case.
2. Arthur B. Pedersen, Sr.'s request for application was not timely filed.

DISPOSITION

The Division's IAD denying the Appellant's application as untimely filed is **AFFIRMED**. This decision takes effect September 4, 1996, unless by that date the Regional Director orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be

⁶George M. Ramos, Appeal No. 94-0008, Regional Director's Decision on Review, at 4, April 21, 1995; Charles J. Petticrew, Appeal No. 95-0008, July 3, 1996.

⁷John T. Coyne, Appeal No. 94-0012, May 24, 1996 (Decision on Reconsideration).

⁸Steven J. Eike, Appeal No. 95-0085, August 1, 1996.

received at this office not later than 10 days after the date of this decision, August 15, 1996.

Rebekah R. Ross
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.

Randall J. Moen
Appeals Officer