

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0057
)	
DAVID W. BROWER,)	DECISION
Appellant)	
_____)	August 16, 1996

STATEMENT OF THE CASE

Appellant David Brower appeals an Initial Administrative Determination [IAD] of the Restricted Access Management Division [Division], dated March 20, 1995. The IAD denied his application for quota share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because he failed to prove that he owned or leased a vessel that made landings of halibut or sablefish during the qualifying years of 1988, 1989, and 1990. Mr. Brower has adequately shown that his interest is directly and adversely affected by the IAD, and that his appeal was timely filed. Because the record contains sufficient information on which to reach a final decision and there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered. 50 C.F.R. § 679.43(g)(2) and (3).¹

ISSUE

Whether Mr. Brower may raise a claim for the first time on appeal.

BACKGROUND

On June 28, 1994, Mr. Brower filed a Request for Application [RFA] for halibut and sablefish QS. He provided nothing on his RFA other than his name, address, phone number, social security number, and date of birth. Thereafter, the Division sent him a QS Data Summary, informing him of his ineligibility of QS. He was given 90 days to challenge the information in the Summary. Mr. Brower never contested the Summary, and on March 20, 1995, the Division issued an IAD, formerly denying his application for QS.

On May 18, 1995, Mr. Brower appealed the IAD, basing his eligibility for QS on the lease of the F/V SARASOTA from Mr. Don Wells during 1984-1993.

¹Formerly 50 C.F.R. § 676.25(g)(2) and (3). All IFQ regulations were renumbered, effective July 1, 1996. *See*, 61 Fed. Reg. 31,270 (1996). The wording of the regulations were unchanged by the renumbering.

Whether Mr. Brower may raise a claim for QS for the first time on appeal.

This office has ruled in Tiger, Inc.² that applicants for QS who do not raise a contrary claim on an RFA or application, or in some other manner before the 90-day deadline for substantiating claims, do not have a timely claim for which relief could be granted on appeal. Mr. Brower's claim on appeal is altogether different than that made on his RFA or at any time during the application period, including the 90-day deadline for substantiating claims. On his RFA he made no specific claim of the ownership or lease of a vessel. On appeal, however, he claimed he leased the F/V SARASOTA during the years of 1984-1993. This claim was raised for the first time on appeal. Since it was contrary to any claim made on his RFA or application, or at any time before the 90-day deadline for substantiating claims, I find that it may not be raised on appeal.

FINDINGS OF FACT

Mr. Brower did not claim on his RFA or application, or at any time before the 90-day deadline for substantiating claims, that he leased a vessel that qualified him for QS.

CONCLUSIONS OF LAW

A claim not made on an RFA or application, or before the 90-day deadline for substantiating claims, may not be raised on appeal.

DISPOSITION

The Division's IAD denying Mr. Brower's application is AFFIRMED for the reasons stated in this decision. This decision takes effect on September 16, 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 received at this office not later than 10 days after the date of this decision, August 26, 1996.

Randall J. Moen
Appeals Officer

²Appeal No. 95-0100 (Decision on Reconsideration), February 26, 1996, at 3.

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