

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0066
)	
MIKE R. RACE)	DECISION
Appellant)	
_____)	August 5, 1996

STATEMENT OF THE CASE

Appellant Mike R. Race filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on March 20, 1995. The IAD denied Mr. Race's application for Quota Share [QS] under the Individual Fishing Quota [IFQ] program based on the absence of evidence that Mr. Race owned or leased a commercial fishing vessel upon which legal landings of halibut or sablefish were made during any of the QS qualifying years of 1988, 1989 or 1990.

On appeal, Mr. Race requests QS associated with his vessel, the F/V RAW FISH, although he leased that vessel to others during the QS qualifying years. Mr. Race has adequately shown that his interest is directly and adversely affected by the IAD. 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)-(3).¹

ISSUE

Whether Appellant is a qualified person eligible to receive QS.

BACKGROUND

Mike Race stated on his request for application [RFA] that he leased his vessel, the F/V RAW FISH to Gunnar Noreen in 1987, to John [Godfrey] in 1988, and to [Rusty] Scudder in 1989. Mr. Race did not submit the multi-part application form for QS or respond to the data provided on that form.

Mr. Race and Mr. Noreen submitted a lease affidavit to the Division showing a lease of the vessel from Mr. Race to Mr. Noreen from May 1, 1986 to October 10, 1986 and from May 1, 1987 to October

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

10, 1987. Mr. Noreen accordingly was awarded any QS in connection with fish caught aboard the F/V RAW FISH during those periods.

Mr. Race and Mr. John Godfrey submitted a lease affidavit to the Division showing a lease of the F/V RAW FISH from Mr. Race to Mr. Godfrey in 1988. Mr. Godfrey accordingly was awarded any QS in connection with fish caught aboard the F/V RAW FISH in 1988.

The records show no legal landings from the F/V RAW FISH during 1989 or 1990.

In a letter delivered to the Division on July 14, 1994, Mr. Race stated that he fished with the lease holders as a deck hand on the F/V RAW FISH.

On or around October 24, 1994, Mr. Race was sent a quota share data summary indicating that he was currently not eligible to receive QS under the IFQ program. That summary had a page containing vessel information on the F/V RAW FISH. That summary listed the following periods: October 11, 1986 - April 30, 1987; October 11, 1987 - December 31, 1987, and April 25, 1986 - April 30, 1986. The periods on the summary were those periods not covered by the leases to Mr. Noreen and Mr. Godfrey, as indicated by the lease affidavits. For each of those periods, the answer to the inquiry "Was the Vessel Leased?" was "N." This meant that the vessel was not leased *to* Mr. Race.²

Mr. Race was given 90 days to provide additional evidence of eligibility. After the expiration of the 90-day period, the Division issued an IAD denying Mr. Race's application for QS.

On appeal, Mr. Race has not submitted new evidence of eligibility. He conceded that the denial of QS for sablefish was justified. He stated that he thought the halibut problem was in the leases to others, but noted that he and the vessel had always fished.

DISCUSSION

The regulations provide in relevant part:

[A] "qualified person" means a "person" . . . that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year.

* * *

²The summary is ambiguous, and it is understandable that Mr. Race might have believed the form to be in error.

. . . A QS qualifying year is 1988, 1989, or 1990.

50 C.F.R. § 679.40(a)(2)-(3).³ Only qualified persons may receive an initial allocation of QS. 50 C.F.R. § 679.40(a)(1).⁴

The regulations further provide: "A person who owns a vessel cannot be a qualified person based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease." 50 C.F.R. § 679.40(a)(2).⁵ Mr. Race has admitted he leased the vessel to Mr. Godfrey during 1988, the only QS qualifying year for which the records show there were any legal landings. During that year he may have been a deck hand for Mr. Godfrey, and may have participated in the fishery. However, Mr. Godfrey, as the lessee of the vessel when it made legal landings in 1988, is the qualified person. *Id.* Mr. Race has failed to submit any evidence refuting the quota share data summary showing him not to be eligible.

FINDINGS OF FACT

1. Mike R. Race leased the F/V RAW FISH to John Godfrey during 1988.
2. The F/V RAW FISH did not make legal landings in the QS qualifying years of 1989 or 1990.

CONCLUSION OF LAW

Mike R. Race is not a qualified person eligible to receive QS.

DISPOSITION

The Division's IAD denying the Appellant's application for QS 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 received at this office not later than 10 days after the date of this decision, August 15, 1996.

³Formerly 50 C.F.R. § 676.20(a)(1).

⁴Formerly 50 C.F.R. § 676.20(a).

⁵Formerly 50 C.F.R. § 676.20(a)(1).

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