

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0077
)	
JAY M. WILSON)	DECISION
Appellant)	
_____)	August 5, 1996

STATEMENT OF THE CASE

Appellant Jay M. Wilson filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on March 20, 1995 by submitting a letter in opposition to the IAD. The IAD denied Mr. Wilson's application for Quota Share [QS] under the Individual Fishing Quota [IFQ] program based on the absence of evidence that Mr. Wilson owned or leased a commercial fishing vessel upon which legal landings of halibut or sablefish were made during any of the QS qualifying years. Mr. Wilson 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 eligible to receive QS under the IFQ program.

BACKGROUND

On October 24, 1994, Mr. Wilson was sent a quota share data summary indicating that he was currently not eligible to receive QS under the IFQ program. He was given 90 days to provide evidence of eligibility. After the expiration of the 90-day period, the Division issued an IAD denying Mr. Wilson's application for QS. Previously, Mr. Wilson had forcefully communicated to the Division his dissatisfaction with the IFQ program.

On appeal, Mr. Wilson has not submitted new evidence of eligibility. Mr. Wilson's appeal consists of a letter attacking the program and those responsible for its administration.

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 regulation in question was unchanged by the renumbering.

DISCUSSION

Mr. Wilson challenges the IFQ regulations as being unconstitutional. Mr. Wilson's challenge to the legality of the IFQ regulations is not within the purview of this Office. I must presume the legal validity of the agency's own duly promulgated regulations.² I note that many of the concerns raised by Mr. Wilson's appeal were addressed by the Ninth Circuit Court of Appeals in Alliance Against IFQs v. Brown³.

FINDING OF FACT

Jay M. Wilson has not presented evidence that he owned or leased a commercial fishing vessel upon which legal landings of halibut or sablefish were made during any of the QS qualifying years.

CONCLUSION OF LAW

Jay M. Wilson has not established eligibility to receive QS under the IFQ program.

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.

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

²George 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.

³84 F.3d 343 (9th Cir. 1996).