

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 95-0060
	)	
TEMPEST FISHERIES, INC.,	)	DECISION
Appellant	)	
	)	January 30, 1996
_____	)	

STATEMENT OF THE CASE

Tempest Fisheries, Inc., filed a timely appeal of an Initial Administrative Determination [IAD] of the Restricted Access Management Division [Division] of the National Marine Fisheries Service, dated March 20, 1995. The IAD denied the Appellant's application for halibut Quota Share [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because the Appellant did not prove that it owned a vessel that made legal landings of halibut during the QS qualifying years (1988, 1989, or 1990). Appellant has adequately shown that its interests are directly and adversely affected. No hearing was held concerning the appeal because the relevant facts are not in dispute.

ISSUE

Did the Appellant own the F/V TEMPEST at a time during the QS qualifying years of 1988, 1989, or 1990 when legal landings of halibut were made from the vessel?

BACKGROUND

On June 21, 1994, the Appellant submitted a Request for Application [RFA] for QS with the Division, listing itself as owner of the vessel F/V TEMPEST since March 1988. The RFA also listed Michael and Patrick Burns as co-owners of the corporation.<sup>1</sup> On October 24, 1994, the Division sent Appellant a QS Data Summary, which showed that the Appellant owned the F/V TEMPEST from March 14, 1989, through December 31, 1994.<sup>2</sup> The Division had no record of any qualifying landings of halibut or sablefish from the F/V TEMPEST during the qualifying years. Consequently, the IAD denied Appellant's request for QS.

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<sup>1</sup>Corporate ownership information was contained on Form C, a form for individuals who are applying for QS as former partners of a dissolved partnership or former shareholders of a dissolved corporation. In a January 23, 1996, telephone conversation with this office, Patrick Burns stated that Tempest Fisheries, Inc., had never been dissolved, and that he had filled out the wrong form.

<sup>2</sup>The ownership information was based on vessel registration records of the Alaska Commercial Fisheries Entry Commission.

With its appeal, the Appellant submitted a U.S. Coast Guard Abstract of Title, which shows that the corporation's ownership of the F/V TEMPEST began on June 29, 1990. During the consideration of this appeal, this office phoned Patrick Burns asking for proof of a landing of halibut or sablefish by Appellant from the F/V TEMPEST on or after June 29, 1990. Mr. Burns sent by fax a copy of a State of Alaska fish ticket, which showed a landing from the F/V Tempest on August 31, 1988.<sup>3</sup> Although the fish ticket is authentic, apparently no one has received QS credit for this landing.<sup>4</sup>

## DISCUSSION

To qualify for any QS, an applicant (or the applicant's successor-in-interest) must have owned or leased a vessel when a legal landing of halibut or sablefish was made from the vessel during the QS qualifying years of 1988, 1989, or 1990.<sup>5</sup> Appellant has submitted a valid state of Alaska fish ticket showing a legal landing of halibut from the F/V TEMPEST on August 31, 1988. The evidence shows that at the time of the landing the Appellant did not own the F/V TEMPEST. According to the U.S. Coast Guard Abstract of Title (which is considered the best evidence of vessel ownership under the IFQ regulations),<sup>6</sup> on the date of the fish ticket, the vessel was owned by Patrick and Michael Burns as individuals, each holding a 50 percent interest. Tempest Fisheries, Inc., therefore, is not eligible for QS, given that the August 31, 1988, fish ticket is its only proof of a legal landing during a QS qualifying year. Patrick and Michael Burns, however, may be eligible individually to receive QS credit for the landing in question because they were the vessel's owners at that time.

## FINDINGS OF FACT

1. The Appellant's ownership of the F/V TEMPEST began on June 29, 1990.
2. The Appellant did not own the F/V TEMPEST at the time of a legal landing during the QS qualifying period of 1988 through 1990.
3. Michael and Patrick Burns owned the F/V TEMPEST as individuals, each holding a 50 percent interest, on August 31, 1988 -- the date of the fish ticket that was submitted by the Appellant.

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<sup>3</sup>The date, though crossed out, was confirmed by Ms. Jessica Gharrett of the Division, following her conversation with a records keeper at the International Pacific Halibut Commission.

<sup>4</sup>Ms. Tracy Buck of the Division, who had the ticket checked and verified with the International Pacific Halibut Commission, was told by the Commission that the ticket was legal and had been incorrectly assigned to the another vessel named F/V TEMPEST.

<sup>5</sup>See 50 C.F.R. § 676.20 (a)(1).

<sup>6</sup>See 50 C.F.R. § 676.20(a)(1)(ii).

## CONCLUSION OF LAW

The Appellant is not a "qualified person" under 50 C.F.R. § 676.20(a)(1).

## DISPOSITION

The Division's IAD denying Appellant's request for QS is AFFIRMED. This decision takes effect on February 28, 1996, unless by that date the Regional Director orders review of the decision. Also, in light of the evidence submitted on appeal showing that Patrick and Michael Burns owned the F/V TEMPEST on the date of a qualifying landing, I recommend that the Division immediately review this evidence for possible allocation of qualifying pounds and issuance of QS and 1996 IFQ to the Burnses as individuals.

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Randall J. Moen  
Appeals Officer