

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0059
)
MARK C. HAWNEY,) DECISION
Appellant)
_____) August 16, 1996

STATEMENT OF THE CASE

Appellant Mark Hawney 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. Hawney has adequately shown that his interest is directly and adversely affected by the IAD, and 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

1. Whether Mr. Hawney waived on appeal his claim that he owned a vessel during the QS qualifying years.
2. Whether Mr. Hawney may raise a claim for QS for the first time on appeal.

BACKGROUND

On June 22, 1994, Mr. Hawney filed a request for application [RFA] for halibut QS, claiming ownership of two unnamed vessels, one purchased in 1987, the other in March 1991. 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. Hawney never contested the Summary, and on March 20, 1995, the Division issued an IAD, denying his application for QS.

On May 18, 1995, Mr. Hawney appealed the IAD, basing his eligibility for QS on a lease of an

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.

unnamed vessel, Alaska vessel registration number AK 2599K, in 1990 with his partner, Rick Koroch. The vessel registration number of the leased vessel was not that of either of the two vessels that he claimed on his RFA.

1. Whether Mr. Hawney waived on appeal his claim that he owned a vessel during the QS qualifying years.

Under the regulations of the IFQ program all issues not set out in an appeal are waived. 50 C.F.R. § 679.43(f).² Mr. Hawney's appeal is based on the lease of a vessel in 1990. No where in his appeal does he claim ownership of a vessel in a QS qualifying year. His appeal is limited only to a claim of a lease. Since Mr. Hawney has not raised the issue of ownership on appeal, I find that it is thereby waived.

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

This office ruled in Tiger, Inc.³ 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. Hawney'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 claimed that he was the owner of a vessel which had qualified him for QS. On appeal he raised a new claim: the lease of a different vessel. This claim was raised for the first time on appeal. Since it was not 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

1. Mr. Hawney did not claim on appeal that he owned a vessel that qualified him for QS.
2. Mr. Hawney 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

1. A claim not made on appeal is waived.
2. A claim not made on an RFA or application, or before the 90-day deadline for substantiating claims,

²Formerly 50 C.F.R. § 676.25(f).

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

may not be raised on appeal.

DISPOSITION

The Division's IAD denying Mr. Hawney'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