

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0144
)	
MATT SHADLE,)	DECISION
Appellant)	
_____)	January 26, 1999

STATEMENT OF THE CASE

Appellant Matt Shadle filed a timely appeal of an Initial Administrative Determination [IAD] issued on September 12, 1995, by the Restricted Access Management [RAM] program.¹ His application for additional halibut and sablefish quota share [QS] under the Individual Fishing Quota [IFQ] program was denied on the grounds that his claim of ownership of the F/V NOOTKA was untimely and that, for IFQ purposes, he is not a successor-in-interest to the seller of the vessel. Mr. Shadle's interests are directly and adversely affected by the IAD. Because the relevant facts are not in dispute, no hearing was ordered.

ISSUES

1. Did Mr. Shadle make a timely claim with RAM regarding the F/V NOOTKA?
2. Should Mr. Shadle receive an allocation of additional qualifying pounds of halibut and sablefish as a "successor-in-interest" to the seller of the F/V NOOTKA?

BACKGROUND

On his Request for Application for Quota Shares [RFA], Mr. Shadle claimed that he purchased the F/V NOOTKA (a.k.a. RISKY BUSINESS) on November 20, 1992, and was still the owner at the time he signed his RFA, January 30, 1994. In response, RAM sent applications for halibut QS and sablefish QS to Mr. Shadle, but he did not return these to RAM. By December 1994, RAM had determined that Mr. Shadle was a qualified person eligible for an initial issuance of halibut and sablefish QS based on his leases of other vessels.

In January 1995, RAM issued QS to Mr. Shadle, but still had not received any evidence from him regarding the F/V NOOTKA. RAM did not deny Mr. Shadle's claim regarding the F/V NOOTKA until Mr. Shadle inquired about it in July 1995. In response, RAM issued an IAD denying the claim on

¹The Restricted Access Management Division was renamed Restricted Access Management program, effective September 28, 1997. [NOAA Circular 97-09, 19 Sep 97].

two grounds. First, RAM interpreted Mr. Shadle's failure to submit evidence or "perfect" his claim by March 12, 1995 (90-day response deadline) as an abandonment of the claim. Thus, the subsequent inquiry in July 1995 was considered untimely. Second, RAM's Official Record showed that all the qualifying landings of halibut and sablefish from the F/V NOOTKA were made before Mr. Shadle owned the vessel. RAM determined that an initial issuance of QS could be made only to persons who owned or leased the vessel at the time the qualifying landings were made, and that the persons who owned the vessel at the time of the landings could not assign to Mr. Shadle their interests in an initial issuance of QS. Thus, RAM rejected Mr. Shadle's claim that when he purchased the vessel at a marshal's sale "he understood that he was receiving all fishing rights as part of the sale," and thus was a qualified "successor-in-interest" to the previous vessel owners.

DISCUSSION

1. Did Mr. Shadle make a timely claim with RAM regarding the F/V NOOTKA?

In Tiger, Inc.,² we concluded that claims made on an RFA are a part of an applicant's application and claim, and are deemed to have been made in a timely manner if the RFA was filed in a timely manner. Having once made the claim in a timely manner, an applicant should not be required to restate the claim to RAM, or "perfect" it, in order to preserve the right to raise and establish the claim on appeal. For purposes of appeal, we do not accept that a timely claim has been abandoned, absent an affirmative representation to that effect by an applicant. Thus, because Mr. Shadle made his claim regarding the F/V NOOTKA on his timely filed RFA and did not abandon his claim, I conclude that the claim was timely and may be considered on appeal.

2. Should Mr. Shadle receive an allocation of additional qualifying pounds of halibut and sablefish as a "successor-in-interest" to the seller of the F/V NOOTKA?

Under the IFQ program, as implemented by RAM, to receive credit for additional qualifying pounds of halibut or sablefish, a qualified person, as defined in 50 C.F.R. § 679.40(a)(2), must have owned or leased the vessel from which the fish were legally landed and at the time of the landing. Mr. Shadle did not own or lease the F/V NOOTKA when it made qualifying landings. RAM's records show that all the qualifying landings of halibut or sablefish from the F/V NOOTKA were made in 1984 and during the period 1986-1990. RAM's records also show that the F/V NOOTKA was owned by Robert Gonder between November 21, 1983, and November 17, 1985; and by Barry McKee between November 18, 1985, and December 31, 1991. Thus, Mr. McKee and Mr. Gonder (if he is otherwise a qualified person), are presumed to be the proper persons to receive credit for the F/V NOOTKA's qualified landings made while they each owned the vessel.

²Appeal No. 95-0100, November 17, 1995, at 9.

We stated in Mark L. Doumit³ that an applicant who merely purchases a vessel cannot receive an initial issuance of QS based on landings made from the vessel by former owners during a period when the applicant did not own or lease the vessel, even if the seller and purchaser agreed that the sale included the vessel's fishing history (or fishing rights). To receive credit for landings made before he or she owned or leased the vessel, an applicant would have to be a successor-in-interest to the former owners or lessees. The successor-in-interest to an individual qualified person (as opposed to a partnership or corporation) can only be the person's estate or heirs.⁴

Mr. Shadle stated that he purchased the F/V NOOTKA in 1992 at a marshal's sale,⁵ and he does not claim any interest in the vessel before that time. Because Mr. Shadle did not own or lease the vessel at any time from 1984 to 1990, he cannot receive credit for the qualifying landings from the vessel unless he is a successor-in-interest to the former vessel owners. Mr. Shadle claims to be their successor-in-interest, but he does not claim, and there is no evidence in the record, that Mr. Gonder and Mr. McKee are deceased or that Mr. Shadle is their heir. Thus, I conclude that Mr. Shadle is not their successor-in-interest, and that he is not eligible to receive an allocation of additional qualifying pounds of halibut and sablefish based on landings from the F/V NOOTKA.

Whatever rights and interests may have been transferred to Mr. Shadle as result of the alleged marshal's sale of the vessel is not for this Office to decide. This Office is not bound by the terms of the marshal's sale, nor is it our duty to interpret and enforce such sales. Mr. Shadle must look to another forum to enforce any rights that he may have as a result of the sale.

FINDINGS OF FACT

1. Mr. Shadle made his claim regarding the F/V NOOTKA on his timely filed RFA.
2. Mr. Shadle did not abandon his claim regarding the F/V NOOTKA.
3. Mr. Shadle did not own or lease the F/V NOOTKA at any time from 1984 to 1990, when it made qualifying landings.
4. Mr. Shadle is not the heir of the former owners of the F/V NOOTKA, Mr. Gonder or Mr. McKee.

³Appeal No. 95-0087, November 6, 1998.

⁴*Id.*

⁵There is no evidence in the record showing that Mr. Shadle has ever had any interest in the F/V NOOTKA.

CONCLUSIONS OF LAW

1. Mr. Shadle's claim regarding the F/V NOOTKA was timely and may be considered on appeal.
2. Mr. Shadle is not the successor-in-interest to the former owners of the F/V NOOTKA, Mr. Gonder or Mr. McKee.
3. Mr. Shadle is not eligible to receive an allocation of additional qualifying pounds of halibut and sablefish based on landings from the F/V NOOTKA.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on February 25, 1999, unless by that date the Regional Administrator orders review of the Decision.

Any party, including RAM, may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m., Alaska Time, on February 5, 1999, the tenth day after the date of this Decision. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement or Points and Authorities in support of the motion.

Edward H. Hein
Chief Appeals Officer