

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of



Appellant

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Appeal No. 22-0004

DECISION

The National Appeals Office (NAO) is a division within the National Marine Fisheries Service (NMFS) Office of Management and Budget, and is located in NOAA's Silver Spring, Maryland headquarters in. The Director of NMFS' Office of Sustainable Fisheries (Director) may affirm, reverse, modify, or remand this decision.¹

[REDACTED] (Appellant) filed the appeal under review. Appellant requests review of [REDACTED] Individual Bluefin Quota (IBQ) share and the resultant allocation for Appellant's fishing vessel F/V [REDACTED] (Vessel) which is associated with Atlantic Tuna Longline category permit number [REDACTED].

On December 13, 2022, NMFS Office of Sustainable Fisheries Highly Migratory Species Division (HMS) sent an email to Appellant titled "2023 IBQ Allocation Determination."² Attached to the email was Appellant's Initial Administrative Determination (IAD).³ Subsequently, on December 20, 2022, HMS sent an email to Appellant titled "Updated 2023 IBQ allocation determination letter."⁴ In that email, HMS notified Appellant that "Due to a calculation error associated with the 25 mt Northeast Distant Area set aside, your Individual Bluefin Quota (IBQ) allocation has been corrected." Attached to the email was Appellant's corrected IAD.⁵

On December 15, 2022, Appellant sent an email to NAO appealing the IAD and stated "IBQ allocation letter for next years quota and it did not account for the previous sets on the vessel from which we purchased said permit from."⁶ The Appellant added: "Needing to know what are

¹ 15 C.F.R. § 906.17(c)(1) (2014).

² Appeal Communication Tab, email from HMS to Appellant titled "2023 IBQ Allocation Determination," dated December 13, 2022.

³ IAD Tab, initial IAD, undated file addressed to [REDACTED].

⁴ Appeal Communication Tab, email from HMS to Appellant titled "Updated 2023 IBQ Allocation Determination," dated December 20, 2022.

⁵ IAD Tab, corrected IAD, undated file addressed to [REDACTED].

⁶ Appeal Tab, email from Appellant to NAO titled "IBQ Allocation Question," dated December 15, 2022.

the steps needed to go forward from here.”⁷ NAO sent follow up emails to Appellant regarding refiling an appeal based on the corrected IAD on December 23, 2022 and January 9, 2023.⁸ In addition, NAO staff called Appellant on January 15, 2023 and January 25, 2023, but did not reach Appellant.

After carefully reviewing the information contained in the record, I have determined it is sufficient to adjudicate this appeal. Therefore, I close the record and render this decision.⁹

ISSUES

The legal issue in this case is whether the IAD appealed is rendered moot by a corrected IAD.

FINDINGS OF FACT

1. HMS Issued to Appellant an IAD on December 13, 2022.¹⁰
2. On December 15, 2022, Appellant appealed the December 13, 2022 IAD.¹¹
3. HMS issued to Appellant a corrected IAD on December 20, 2022.¹²

ANALYSIS

Does the corrected IAD render the appeal moot?

HMS issued two IADs to Appellant, with a second IAD superseding the first. The record establishes that Appellant did not respond to any NAO communications regarding withdrawing [REDACTED] appeal for the initial and defunct IAD, and filing an appeal for the corrected and operative IAD. In this case, Appellant appealed an IAD that was superseded by a new IAD. Because Appellant filed an appeal on an IAD that is inoperative (the December 13, 2022 IAD) I am unable to adjudicate his appeal.

CONCLUSIONS OF LAW

Appellant’s appeal is rendered moot by the corrected (December 20, 2022) IAD.

⁷ *Id.*

⁸ Appeal Communication Tab, emails from NAO to Appellant titled “Appealing Your Corrected Initial Administrative Determination,” dated December 23, 2022 and January 9, 2023.

⁹ 15 C.F.R. § 906.11(a)(1) (2014); 15 C.F.R. § 906.12(a) (2014).

¹⁰ IAD Tab, initial IAD, undated file addressed to [REDACTED].

¹¹ Appeal Tab, email from Appellant to NAO titled “IBO Allocation Question,” dated December 15, 2022.

¹² IAD Tab, corrected IAD, undated file addressed to [REDACTED].

ORDER

Appellant may submit a Motion for Reconsideration.¹³ Any Motion for Reconsideration must be emailed or transmitted by fax to NAO no later than March 13, 2023. A Motion for Reconsideration must be in writing and contain a detailed statement of one or more specific material matters of fact or law that the administrative judge overlooked or misunderstood.



Ryan McQuighan
Administrative Judge

Date Issued: March 3, 2023

¹³ 15 C.F.R. § 906.16 (2014).