

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

In re Application of

F/V

Permit Number ATL-

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Appeal No. 23-0018

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 headquarters in Silver Spring, Maryland. The Director of NMFS' Office of Sustainable Fisheries may affirm, reverse, modify, or remand this decision.¹

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

On December 13, 2022, NMFS Office of Sustainable Fisheries Highly Migratory Species Management 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 letter, 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 February 9, 2023, Appellant appealed the corrected IAD issued to him on December 20, 2022.⁶ In his appeal letter, Appellant states that "the initial determination of sets to determine IBQ allocation is off by [his] logbooks by individual sets. NMFS estimates leaves [him] with almost no quota which hurts [his] ability to fish in a cost effective manner if at all."⁷

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.

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

⁵ IAD Tab, corrected IAD.

⁶ Appeal Tab, Appellant's appeal letter sent by mail, postmarked February 6, 2023, received February 9, 2022.

⁷ Id.

On February 16, 2023, NAO sent to Appellant a letter acknowledging receipt of his appeal, and requesting Appellant submit any additional material concerning the appeal to NAO by February 28, 2023.⁸ Appellant provided no additional supporting documentation.

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

ISSUES

The legal issue in this case is whether Vessel associated with permit number ATL- qualifies for additional IBQ share. However before I may consider the merits of the case, I must first determine whether Appellant timely appealed the IAD.

If Appellant did not timely file his appeal, I am barred from determining Vessel's eligibility for additional IBQ share.

FINDINGS OF FACT

1. HMS issued to Appellant its initial IAD on December 13, 2022.¹⁰
2. HMS issued to Appellant its corrected IAD on December 20, 2022.¹¹
3. NAO received Appellant's appeal on February 9, 2023.¹²

PRINCIPLES OF LAW

"Atlantic Tunas Longline Permit holders may appeal the IAD by submitting a written request for an appeal to the National Appeals Office within 45 days after the date the IAD is issued."¹³

"A document transmitted to NAO is considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO."¹⁴

"When computing any time period specified under these rules, count every day, including intermediate Saturdays, Sundays, and legal holidays."¹⁵

A person may not request an extension of time to file a petition to appeal.¹⁶

⁸ Appeal Correspondence Tab, Acknowledgment Letter, dated February 16, 2023.

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

¹⁰ IAD Tab, initial IAD.

¹¹ IAD Tab, corrected IAD.

¹² Appeal Tab, Appellant's appeal letter sent by mail, received February 9, 2022.

¹³ 50 C.F.R. § 635.15(e)(1) (2023).

¹⁴ 15 C.F.R. § 906.4(a)(2) (2014).

¹⁵ 15 C.F.R. § 906.2 (2014).

¹⁶ 15 C.F.R. § 906.3(e)(2) (2014).

ANALYSIS

Did Appellant timely appeal the IAD issued to him?

On December 20, 2022, HMS issued its corrected IAD to Appellant.¹⁷ Pursuant to 50 C.F.R. § 635.15(e)(1), Appellant had 45 days after December 20, 2022, to timely file his appeal, which was February 3, 2023.

Appellant states in his appeal letter that the corrected IAD is inaccurate, and that the error significantly affects his ability to cost effectively operate his business.¹⁸


The record establishes that Appellant did not appeal the corrected IAD that HMS issued to him within the 45-day time limit specified in 50 C.F.R. § 635.15(e)(1). Furthermore, 15 C.F.R. § 906.3(e)(2) explicitly states that a person may not request an extension of time to file an appeal. Additionally, neither 50 C.F.R. § 635.15(e)(1) nor 15 C.F.R. § 906 contain any provisions allowing medical, financial, or other hardship to be considered when determining the timeliness of an appeal filing. I understand Appellant's concern in not receiving the quantity of IBQ share that he believes he should have received, however the applicable regulations preclude an appellate review on the merits of his case.

CONCLUSIONS OF LAW

Appellant has not shown by a preponderance of the evidence that he timely filed his appeal. Accordingly, I must uphold the IAD.

ORDER

The IAD dated December 20, 2022, is upheld. Appellant may submit a Motion for Reconsideration.¹⁹ NAO must receive any Motion for Reconsideration by mail, email, or fax 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.



Steven Goodman
Chief Administrative Judge

Date Issued: March, 3, 2023

¹⁷ IAD Tab, revised IAD.

¹⁸ Appeal Tab, Appellant's appeal letter sent by mail, received February 9, 2022.

¹⁹ 15 C.F.R. § 906.16 (2014).