

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

In re Application of

[REDACTED]

F/V [REDACTED]

Permit Number [REDACTED]

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Appeal No. 23-0020

DECISION

STATEMENT OF THE CASE

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 Regional Administrator of NMFS' West Coast Regional Fisheries Office (WCRO) may affirm, reverse, modify, or remand this decision.¹

[REDACTED] (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 [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 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 revised IAD.⁵

On March 17, 2023, Appellant appealed the revised IAD issued to him on December 20, 2022.⁶ In his appeal letter, Appellant states that [REDACTED] in January 2023 [REDACTED]

¹ 15 C.F.R. § 906.17(c)(1) (2023).

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, revised IAD.

⁶ Appeal Tab, Appellant's Appeal Letter, dated March 17, 2023.

and [REDACTED] so [he] request a[n] extension to the time period to file this request” for appeal.’

On June 1, 2023, Appellant’s [REDACTED], sent an email to NAO indicating that Appellant has [REDACTED] in January when the quota was released and is still in recovery.”⁸ [REDACTED] further stated that Vessel’s IBQ allocation should be based on a total of [REDACTED] sets from November 1, 2019 to October 31, 2022.⁹ Subsequently, on June 13, 2023, [REDACTED] sent a letter to NAO with Vessel’s set information for the relevant years that [REDACTED] obtained from the SEFSC Logbook Program on March 24, 2023.¹⁰

On June 28, 2023, NAO sent to Appellant a letter acknowledging receipt of his appeal with a filing date of March 17, 2023, and requesting Appellant submit any additional material concerning the appeal to NAO by July 11, 2023.¹¹ 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.¹²

ISSUES

The legal issue in this case is whether Vessel associated with permit number [REDACTED] 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, 2022.¹³
2. HMS issued to Appellant its revised IAD on December 20, 2022.¹⁴
3. Appellant filed his appeal on March 17, 2023.¹⁵

⁷ Id.

⁸ Appeal Communication Tab, Email from Appellant to NAO, dated June 1, 2023.

⁹ Id.

¹⁰ Appeals Tab, [REDACTED] Petition, dated June 13, 2023.

¹¹ Appeal Communication Tab, Acknowledgment Letter, dated June 28, 2023.

¹² 15 C.F.R. § 906.11(a)(1) (2023); 15 C.F.R. § 906.12(a) (2023).

¹³ IAD Tab, initial IAD.

¹⁴ IAD Tab, revised IAD.

¹⁵ Appeal Tab, Appellant’s Appeal Letter, dated March 17, 2023.

PRINCIPLES OF LAW

“A petition must be filed within 45 days after the date the initial administrative determination is issued unless a shorter or longer filing timeframe is explicitly specified in the regulations governing the initial administrative determination.”¹⁶

“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.”¹⁷

“A document transmitted to NAO is considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO.”¹⁸

“When computing any time period specified under these rules, count every day, including intermediate Saturdays, Sundays, and legal holidays.”¹⁹

“A person may not request an extension of time to file a petition to appeal.”²⁰

ANALYSIS

Did Appellant file a timely appeal of the IAD issued to him?

On December 20, 2022, HMS issued its revised IAD to Appellant.²¹ Pursuant to 15 C.F.R. § 906.3(e) and 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.

In his appeal letter, dated March 17, 2023, Appellant requests an extension to file his appeal due to a personal medical related circumstance.²²

The record establishes that Appellant did not appeal the revised IAD that HMS issued to him within the 45-day time limit specified in 15 C.F.R. § 906.3(e) and 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 empathize with Appellant’s unfortunate circumstances and I understand his concern in not receiving the quantity of IBQ share that he believes is correct, however; the applicable regulations preclude an appellate review on the merits of his case.

¹⁶ 15 C.F.R. § 906.3(e) (2023).

¹⁷ 50 C.F.R. § 635.15(e)(1) (2023).

¹⁸ 15 C.F.R. § 906.4(a)(2) (2023).

¹⁹ 15 C.F.R. § 906.2 (2023).

²⁰ 15 C.F.R. § 906.3(e)(2) (2023).

²¹ IAD Tab, revised IAD.

²² Appeal Tab, Appellant’s Appeal Letter, dated March 17, 2023.

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.²³ Any Motion for Reconsideration must be transmitted by email or fax to NAO no later than July 22, 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.

[REDACTED]
Sofia Rizvi
Administrative Judge

Date Issued: July 12, 2023

²³ 15 C.F.R. § 906.16 (2023).