

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

In re Application of	)	Appeal No. 12-0003
	)	
	)	ORDER DISMISSING
	)	APPEAL
Applicant	)	
	)	

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The National Appeals Office (NAO) is a division within the National Marine Fisheries Service (NMFS), Office of Management and Budget. NAO operates out of NOAA's headquarters in Silver Spring, MD and maintains an office in NMFS's Alaska Regional office. NAO is the successor to the Office of Administrative Appeals (OAA), Alaska Region, and is charged with processing appeals that are on file with OAA.

On February 28, 2012, NAO received  (Applicant's) appeal dated February 23, 2012. The appeal was based on an Initial Administrative Determination (IAD) issued by the Restricted Access Management program (RAM) within NMFS.

On June 3, 2005, Applicant applied for a Crab Processor Quota Share (PQS) pursuant to the Bering Sea Aleutian Islands Crab Rationalization Program (CRP).<sup>1</sup> The application was filed with RAM, who is responsible for reviewing and determining whether an applicant will receive a permit(s).<sup>2</sup>

On June 27, 2005, RAM sent Applicant a Notice of Opportunity to Submit Evidence (Notice). In the Notice, RAM informed Applicant that none of the claims made in his application are supported by the Official Record and that he provided no documentation with his application for RAM to review and compare with the Official Record. RAM informed Applicant he had until July 27, 2005, to submit additional evidence to support his application. RAM received no additional evidence from Applicant by this date.

On April 19, 2006, RAM issued the IAD at issue in this appeal.<sup>3</sup> In the IAD, RAM denied Appellant's application and stated there is no indication Applicant satisfied the program requirements contained in the program instructions and the June 27, 2005, Notice. RAM informed Applicant he may appeal the IAD, but any appeal must be received by June 19, 2006.

RAM sent the IAD to Applicant by certified mail. Applicant does not deny timely receiving the IAD, but states in his February 23, 2012, letter that "[d]ue to the confusion

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<sup>1</sup> Final Rule, 70 Fed. Reg. 10,174 (Mar. 2, 2005).

<sup>2</sup> Original File Tab, Application for Crab Processor Quota Share, filed June 3, 2003.

<sup>3</sup> Original File Tab, IAD.

caused by the litigation and later bankruptcy proceedings and related adversary proceedings, no appeal of the IAD was made until now.”<sup>4</sup> Applicant requests NAO equitably toll the time period barring late filed appeals and allow his appeal to proceed.

Pursuant to applicable regulations, appeals to NAO must be filed within sixty days of the date an IAD is issued.<sup>5</sup> In the IAD, RAM informed Applicant that in order to appeal the IAD, he must file an appeal by June 19, 2006. Since the appeal was received on February 28, 2012, more than sixty days after the IAD was issued, Applicant has not complied with the procedural requirements for perfecting an appeal with NAO. Accordingly, NAO does not accept Applicant’s appeal for review on the merits, and I dismiss the appeal with prejudice.<sup>6</sup>

Applicant argues OAA, the predecessor to NAO, has previously recognized equitable tolling. Although OAA applied equitable tolling to the late filing of initial applications in some programs, there is no evidence to support either OAA or NAO ever applied equitable tolling to late filed appeals.

Not considering the correctness of OAA entertaining equitable arguments in prior cases, the fact remains that the CRP regulation does not authorize relief to late filed appeals under equitable principles. Without such authority, there is no basis upon which NAO may grant relief to an untimely filed appeal under the theory of equitable tolling. As opposed to a court of law, in which equitable relief may be an available remedy when there is not remedy at law, an administrative agency is not presumed to be vested with such authority. An administrative agency is only vested with such authority if explicitly delegated such powers by Congress. Applicant has not provided any support for the proposition that an administrative agency can make law in the form of relief lying in equity. Without such evidence or legal authority within the CRP regulation to grant relief under equitable principles, I cannot toll Applicant’s untimely filed appeal.

In deciding to dismiss Applicant’s appeal, I have carefully read the entire file, including Applicant’s appeal letter. I understand he believes his late filing should be excused due to extreme financial and legal circumstances. However, I am not authorized under applicable regulations to waive filing requirements.

This Order is the final agency action for purposes of judicial review, unless a motion for reconsideration is made pursuant to <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>, or the Regional Administrator reverses, modifies, or remands this Order pursuant to 50 C.F.R. § 679.43 (k), (o).

Appellant or RAM may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m. Alaska Standard Time, on the tenth day after the date of this Order, April 23, 2012. A Motion for Reconsideration must be in writing, must

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<sup>4</sup> Appeal letter dated February 23, 2012, received February 28, 2012.

<sup>5</sup> See 50 C.F.R. § 679.43(d).

<sup>6</sup> See 50 C.F.R. § 679.43(d).

allege one or more specific material matters of fact or law that were overlooked or misunderstood by the administrative judge, and must be accompanied by a written statement of points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the Order pending a ruling on the motion or the issuance of a Decision on Reconsideration.

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Steven Goodman  
Administrative Judge

Date Issued: April 11, 2012