



that as a result of NMFS “taking four months to determine [its] error,” he is now “stuck with Slope Rock that worthless to [him].” Appellant estimated he has suffered losses of approximately ██████████.

On June 6, 2019, NAO sent Appellant a Request for Information, requesting that Appellant provide NAO with documentation identifying him as an owner of Vessel.<sup>5</sup> On June 12, 2019, NAO received documentation from Appellant’s attorney establishing that Appellant owned Vessel.<sup>6, 7</sup>

On June 17, 2019, NAO sent to Appellant a letter acknowledging receipt of his appeal.<sup>8</sup> The letter informed Appellant that if he would like to provide additional material concerning his appeal he should submit it to NAO by June 28, 2019. NAO received no additional material from Appellant.

On July 1, 2019, NAO sent to Appellant a Notice Scheduling Hearing, notifying Appellant of a scheduled telephonic hearing for his appeal on July 17, 2019.<sup>9</sup> On July 17, 2019, Appellant testified during his scheduled hearing that NMFS informed him in January 2019 that his vessel cap for the stock complex at issue was 208,000 pounds, but that NMFS later informed him in April 2019 that the vessel cap was 90,000 pounds. Appellant stated that because NMFS did not provide him with earlier notice of the reduction he should either have his original QP restored or be financially compensated for his resulting loss.<sup>10</sup>

I have determined the information in the record is sufficient to adjudicate this appeal. I therefore close the record and issue this decision.<sup>11</sup> In reaching my decision, I have carefully reviewed the entire record.

#### ISSUE

The issue in this case is whether NMFS properly notified Appellant that he must transfer excess QP out of the vessel account to comply with the 2019 annual QP limit of 90,478 pounds of minor slope rockfish south of 40°10’ N. latitude.

If the answer to this question is yes, Appellant must transfer excess QP out of the vessel account.

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<sup>5</sup> Decisions/Orders/Notices Tab, Request for Information, issued June 6, 2019.

<sup>6</sup> Appeal Communication Tab, Fax from ██████████ Law Offices with documentation establishing Appellant as owner of Vessel, dated June 11, 2019, received June 12, 2019.

<sup>7</sup> Appellant’s attorney indicated that he is assisting Appellant with the administration of ██████████ estate, and that NAO should continue to contact Appellant directly concerning his appeal.

<sup>8</sup> Appeals Correspondence Tab, Acknowledgment Letter, dated June 17, 2019.

<sup>9</sup> Decisions/Orders/Notices Tab, Notice Scheduling Hearing, dated May 29, 2019.

<sup>10</sup> Audio Recording of July 17, 2019, scheduled hearing.

<sup>11</sup> 15 C.F.R. § 906.12(a) (2014).

## FINDINGS OF FACT

1. On March 7, 2019, NMFS discovered that it had issued 2019 minor slope rockfish south of 40°10' N. latitude QP based on an incorrect shorebased trawl allocation for this stock complex.<sup>12</sup>
2. On April 12, 2019, NMFS issued a Public Notice titled "Excessive Allocation of 2019 Shorebased Individual Fishing Quota (IFQ) for Minor Slope Rockfish South of 40°10' N", and distributed the notice to the WCRO groundfish listserv.<sup>13</sup>
3. On April 15, 2019, NMFS sent to Appellant an email stating that Vessel exceeds the corrected vessel limit of 90,478 lbs for minor slope rockfish south of 40°10' N., and that NMFS would be mailing an IAD to the vessel account owner in the next week.<sup>14</sup>

## PRINCIPLES OF LAW

A vessel account may not have QP or IBQ pounds in excess of the QP Vessel Limit in any year.<sup>15</sup>

## ANALYSIS

***Did NMFS properly notify Appellant that he must transfer excess QP out of the vessel account to comply with the 2019 annual QP limit of 90,478 pounds of minor slope rockfish south of 40°10' N. latitude?***

The Regulation states that a vessel account may not have QP or IBQ pounds in excess of the QP Vessel Limit in any year.<sup>16</sup> Appellant argues that NMFS should have informed him sooner about transferring excess QP out of the vessel account.<sup>17</sup> Appellant, however, did not submit evidence supporting that NMFS was required to provide him with earlier notice that Vessel was in excess of the correct annual limit for the stock complex. Further, the Regulation has no provisions about providing notice to an account owner when a vessel has excess QP in the vessel account.

The record establishes that on March 7, 2019, NMFS discovered that it had issued 2019 minor slope rockfish south of 40°10' N. latitude QP based on an incorrect shorebased trawl allocation for this stock complex.<sup>18</sup> The record also establishes that on April 12, 2019, NMFS issued a Public Notice concerning an excessive allocation of 2019 Shorebased IFQ for the stock

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<sup>12</sup> Appeal Communication Tab, Public Notice titled "Excessive Allocation of 2019 Shorebased Individual Fishing Quota (IFQ) for Minor Slope Rockfish South of 40°10' N", dated April 12, 2019; and email from Melissa Hooper, dated June 28, 2019.

<sup>13</sup> Appeal Communication Tab, Public Notice titled "Excessive Allocation of 2019 Shorebased Individual Fishing Quota (IFQ) for Minor Slope Rockfish South of 40°10' N", dated April 12, 2019.

<sup>14</sup> Appeals Communication Tab, email from Matthew Dunlap to ██████████ dated April 15, 2019.

<sup>15</sup> 50 C.F.R. § 660.140(b)(1)(v).

<sup>16</sup> 50 C.F.R. § 660.140(b)(1)(v).

<sup>17</sup> Audio Recording of July 17, 2019, scheduled hearing.

<sup>18</sup> Appeal Communication Tab, Public Notice titled "Excessive Allocation of 2019 Shorebased Individual Fishing Quota (IFQ) for Minor Slope Rockfish South of 40°10' N", dated April 12, 2019; and email from Melissa Hooper, dated June 28, 2019.

complex<sup>19</sup>, and that on April 15, 2019, NMFS sent to Appellant an email stating that Vessel exceeded the corrected vessel limit of 90,478 lbs for the stock complex.<sup>20</sup> Therefore, even if there was a requirement to promptly notify Appellant that Vessel was in excess of the correct annual vessel limit, I find that NMFS provided notice to Appellant within a reasonable amount of time (approximately 30 days) after discovering the issue.

Appellant further argues that NMFS should either restore his original QP or compensate him financially for the reduction in QP.<sup>21</sup> As indicated above, the Regulation states that a vessel account may not have QP or IBQ pounds in excess of the QP Vessel Limit in any year.<sup>22</sup> Appellant has not provided authority for, and the Regulation has no provision regarding, restoring QP to a vessel account with QP in excess of the QP Vessel Limit.

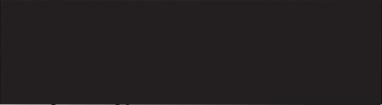
I have carefully considered Appellant's claim that the Federal Government should compensate him; however, the Regulation contains no provisions for compensation to applicants in Appellant's or any other circumstance. As opposed to a court of law, in which equitable relief may be an available remedy when there is not a remedy at law, an administrative agency may only grant equitable relief if explicitly delegated such authority by Congress. Appellant has provided no evidence to support that Congress has vested NMFS with equitable relief authority. Without such evidence or legal authority, I cannot grant Appellant's request for compensation.

#### CONCLUSIONS OF LAW

I conclude that the IAD NMFS issued to Appellant is consistent with the Regulation. In reaching my decision, I carefully examined the entire record. I must uphold the IAD because Appellant did not establish by a preponderance of the evidence that NMFS was required to provide notice sooner to Appellant that Vessel was in excess of the correct annual vessel limit for minor slope rockfish south of 40°10' N.

#### ORDER

The IAD dated April 26, 2019, is upheld. Appellant may submit a Motion for Reconsideration. Any Motion for Reconsideration must be postmarked or transmitted by fax to NAO no later than August 1, 2019 (within 10 days after service). 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: **JUL 22 2019**

<sup>19</sup> Appeal Communication Tab, Public Notice titled "Excessive Allocation of 2019 Shorebased Individual Fishing Quota (IFQ) for Minor Slope Rockfish South of 40°10' N", dated April 12, 2019.

<sup>20</sup> Appeals Communication Tab, email from Matthew Dunlap to , dated April 15, 2019.

<sup>21</sup> Audio Recording of July 17, 2019, scheduled hearing.

<sup>22</sup> 50 C.F.R. § 660.140(b)(1)(v).