

application on that date. He also stated that “My wife was supposed to have mailed it and said she did.”

The record in this appeal shows that the original of Mr. Christensen’s application, with his signature dated July 30, 2006, was postmarked at Seattle on August 11, 2006, and received at RAM on August 16, 2006. Also included in the envelope was a hand-written note that reads as follows:

To Whom It May Concern:

Please except my sincere apology as I am taking care of Walt Christensen’s home he is up fishing, I found this very important letter that I was suppose to mail before August 1st, and I forgot! I’m so sorry, I hope it doesn’t cause any problems.

Thank you,
Joanne Christensen [last name unclear]¹

Mr. Christensen completed his application on July 30, 2006, only two days before the filing deadline. That was a Sunday, when there is normally minimal, if any, mail service. Under these circumstances, even if the application had been mailed at the first opportunity, it likely would not have arrived at RAM’s offices by the August 1 deadline. If it had been faxed or transmitted electronically on that Sunday, Monday, or Tuesday, however, it could have been received at RAM by the deadline. Nonetheless, the evidence in the record shows that the application was not mailed until 12 days after Mr. Christensen signed it and 10 days after the filing deadline.

In *Kurt E. Danielson*, an applicant had relied on his wife to complete and mail his IFQ application for him, but she mailed it on a Saturday, one day late, and it arrived at RAM on Monday, three days after the filing deadline.² In that case we stated:

His wife's failure to act properly on his behalf does not excuse the late filing. The Appellant chose his wife to be his agent and, as such, her negligence is attributable to him. Under the most fundamental principle of agency law, "He who acts through another, himself acts."³

¹RAM construed the letter as a request for reconsideration. On August 18, 2006, RAM issued a Determination on Reconsideration that affirmed the IAD.

²Appeal No. 94-0003 (Nov. 30, 1995). Under the Pacific halibut and sablefish IFQ program, RAM accepted Applications or Requests for Applications as meeting the filing deadline if they had been postmarked by the deadline. Thus, Mr. Danielson’s application was only one day late.

³*Id.* at 3 (citation omitted). *Accord T. Samuelson and T. Vasileff*, Appeal No. 94-0011 at 4 (Sep. 18, 1995).

Thus, the fact that Mr. Christensen relied on his wife to mail the application for him does not excuse his lateness. Nor has Mr. Christensen stated facts that would trigger application of the equitable tolling doctrine, i.e., he has not stated extraordinary circumstances beyond his control that prevented him from filing the application by the deadline.⁴

Although denying Mr. Christensen an annual IFQ permit because of the missed deadline may have a harsh result, I do not have any authority to waive or stay the filing deadline in this case. NMFS has adequately stated its need to establish the August 1 annual deadline:

This deadline provides NMFS the time necessary to calculate whether, and how much, of the IFQ issued to a person should be designated as Class A or Class B IFQ based on the affidavit of affiliation provided in the application. NMFS would need to know all affiliation information for all persons to calculate the Class A/B IFQ ratios for each person accurately. Without this deadline, NMFS would not have sufficient information on affiliations and could not calculate the Class A/B ratio for a person.

This deadline date of August 1 allows NMFS time to issue the IFQ and IPQ for the Aleutian Islands golden king crab fishery (which typically begins in mid-August) and sufficient time to calculate and issue the IFQ and IPQ for all the other fisheries when the TACs are announced by the State of Alaska (in the Fall.)⁵

The fact that the annual application deadline was set at a time of year that may be inconvenient for many fishermen is beyond my purview. It is not the role of this office to question the wisdom or the validity of NMFS's policy choices underlying the agency's duly promulgated regulations.⁶

Based on all the above, I conclude as a matter of law that Mr. Christensen's late application cannot be deemed as having been timely filed. Thus, I conclude that RAM properly denied his application for an annual IFQ permit.

FINDING OF FACT

I find by a preponderance of the evidence in the record that Mr. Christensen's application for the annual IFQ permit was mailed on August 11, 2006, and received by RAM on August 16, 2006, fifteen days past the filing deadline.

⁴See, e.g., *John T. Coyne*, Decision on Reconsideration, Appeal No. 94-0012 (May 24, 1996); *Estate of Marvin C. Kinberg*, Appeal No. 95-0035 (Aug. 1, 1997); and *Christopher O. Moore*, Appeal No. 95-0044 (Sep. 5, 1997).

⁵Proposed Rule, 69 Fed. Reg. 63,200, 63,222 (Oct. 29, 2004).

⁶*George M. Ramos*, Decision on Review, Appeal No. 94-0008, at 4 n.7 (Apr. 21, 1995).

CONCLUSIONS OF LAW

1. The fact that Mr. Christensen relied on his wife to mail the application for him does not excuse his lateness because an agent's negligence is attributable to the principal.
2. Mr. Christensen's late application cannot be deemed as having been timely filed.
3. RAM properly denied his application for an annual IFQ permit.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on June 1, 2007, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. §679.43(o).

The Appellant or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska Time, on May 14, 2007, the tenth day after this Decision.⁷ A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Administrative Judge, and must be accompanied by a written statement in support of the motion.

Edward H. Hein
Chief Administrative Judge

⁷If the last day of the time period for filing reconsideration is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.