

VESSEL NUMBER	VESSEL NAME	PERMIT HOLDER	EFF DATE	EXP DATE
[REDACTED]	[REDACTED]	[REDACTED]	1/30/2024	9/30/2024
[REDACTED]	[REDACTED]	[REDACTED]	3/27/2023	6/30/2024
[REDACTED]	[REDACTED]	[REDACTED]	10/26/2021	6/30/2022
[REDACTED]	[REDACTED]	[REDACTED]	11/2/2020	10/31/2021

On March 22, 2024, Appellant emailed to NAO several documents concerning his appeal and stated the additional following arguments in support of his appeal:

Two things seem clear but in direct contradiction:

1. Several documents suggest that the transfer or permits was completed in March of 2023
2. Other documents have been mailed to [REDACTED] (my company which owned the permits before the transfer) suggesting that I am still the owner of the permits, and that certain actions are required of me; and that catch data that SHOULD BE credited to these permits is being denied or ignored

If it weren't for the latter I would ignore it as sloppy or delayed record keeping- but the fact that valuable catch history may be discarded or ignored is something I feel needs to be fixed.

...

I have also attached an email exchange with [REDACTED] [REDACTED] from March of 2023 stating that the transfer had taken place.

I also confirmed yesterday that the new owners of the permits has the logbooks and has been reporting NO FISHING months since December of 2023[.]²⁷

In addition, on March 22, 2024, [REDACTED] sent an email to NAO on behalf of Appellant explaining the events surrounding the Permit transfer as follows:

The transfer of the permits from [REDACTED], [REDACTED] to [REDACTED] began in June 2022.

²⁷ Appeal Communications Tab, Appellant email to NAO, dated March 22, 2024.

- His mailing address was valid, letters went out Jan 2024 and we did not receive a bounce back.³³

Having carefully reviewed Appellant's written materials and testimony, as well as the information from HMS and the SERO Permit Office, I have determined there is sufficient evidence to adjudicate this appeal. Therefore, I close the record and render this decision.³⁴

ISSUES

At issue in this appeal is whether the vessel associated with Permit number ATL- is eligible for 2024 IBQ share and resultant allocation. However, before I may consider the merits of the case, I must first determine whether Appellant timely appealed the IAD and whether Appellant has standing to request an appeal of the IAD.

FINDINGS OF FACT

1. On May 21, 2021, NMFS published a proposed rule to modify Atlantic Highly Migratory Species bluefin tuna management measures applicable to bluefin fisheries.³⁵
2. On October 3, 2022, NMFS published a final rule implementing the Regulation, which became effective on January 1, 2023.³⁶
3. The Regulation was codified at 50 C.F.R. § 635.15.³⁷
4. On December 21, 2023, HMS emailed its IAD, dated December 21, 2023, to Appellant's email address of record that was associated with Permit.³⁸
5. On January 18, 2024, HMS physically mailed to Appellant the IAD, dated December 21, 2023.³⁹
6. Appellant's IAD indicates that F/V reported pelagic longline sets for the 36-month period from November 1, 2020 to October 31, 2023.⁴⁰
7. Appellant filed his appeal on February 11, 2024.⁴¹

³³ Id.

³⁴ 15 C.F.R. § 906.12(a) (2024).

³⁵ 86 Fed. Reg. 27686 (May 21, 2021).

³⁶ 87 Fed. Reg. 59966 (Oct. 3, 2022).

³⁷ 50 C.F.R. § 635.15 (2024).

³⁸ Appeal Communications Tab, HMS emails to NAO, dated March 8, 2024 and March 28, 2024.

³⁹ IAD Tab, IAD; Appeal Communications Tab, HMS email to NAO, dated March 8, 2024 (indicating that HMS mailed a hardcopy of its 2024 IBQ determination to Appellant on January 18, 2024).

⁴⁰ IAD Tab, IAD.

⁴¹ Appeal Tab, Appeal Letter, dated February 11, 2024.

The Regulation states that in the last quarter of each year, NMFS issues IADs to notify ATL category LAP holders “via electronic methods (such as an email) and/or letter” of their “IBQ shares, their IBQ allocations, and the regional designations of those shares and allocations for the subsequent fishing year.”⁵² However, if an IBQ shareholder does not have a valid ATL category LAP associated with a vessel as of December 31 “due to a permit renewal or transfer, NMFS will issue IBQ allocation for the relevant fishing year if/when the permit renewal or transfer is completed and a valid LAP is associated with a vessel.”⁵³

The Regulation further provides that an ATL LAP holder that has fished using pelagic longline gear on at least one set during a recent 36-month period “is eligible to receive an annual IBQ share...and is considered an IBQ shareholder.”⁵⁴ In order for an IBQ shareholder’s vessel to be considered an “eligible vessel,” it must have been issued a valid ATL permit when the pelagic longline sets occurred.⁵⁵

“In circumstances where a LAP is transferred from one vessel to another during the relevant 36 month period, the eligible vessel(s) is that which deployed the pelagic longline sets.”⁵⁶ NMFS permit records are “the sole basis for determining permit transfers, permit renewals, and the validity of permits;” no other proof of permit history will be considered as supporting documentation for appeals.⁵⁷

Regarding changes in permit application information, “a vessel owner or dealer must report any change in the information contained in an application for permit within 30 days after such change. The report must be submitted in a manner and/or to a location designated by NMFS.”⁵⁸

ANALYSIS

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

The Regulation provides that NMFS will inform ATL permit holders of their IBQ share and allocation during the last quarter of each year, “via electronic methods (such as an email) and/or letter.”⁵⁹ Pursuant to 15 C.F.R. § 906.3(e) and 50 C.F.R. § 635.15(e)(1), Appellant had 45 days after the date of the IAD to timely file his appeal.

HMS asserted that on December 21, 2023, it emailed Appellant’s IAD to Appellant’s email address of record [REDACTED] that was associated with Permit.⁶⁰ HMS acknowledged that the email address belongs to [REDACTED].⁶¹ In addition, HMS confirmed that Appellant did not report an email address change to NMFS from the

⁵² 50 CFR § 635.15(e).

⁵³ *Id.*

⁵⁴ *Id.* § 635.15(b)(1).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* § 635.15(e)(1)(ii).

⁵⁸ *Id.* § 635.4(i).

⁵⁹ 50 C.F.R. § 635.15(e).

⁶⁰ Appeal Communications Tab, HMS emails to NAO, dated March 8, 2024 and March 28, 2024.

⁶¹ Appeal Communications Tab, HMS email to NAO, dated March 28, 2024.

approved.⁷¹ The IAD, dated December 21, 2023, is the only operative IAD associated with Permit.

The NAO Rules of Procedures provide that in a petition for appeal, the appellant must state how the IAD “directly and adversely affects” them.⁷² On January 30, 2024, prior to Appellant filing his petition to appeal on February 11, 2024, Permit was transferred to the new owner, [REDACTED].⁷³ In his appeal, Appellant states that the IAD “adversely affects his operations for the 2024 permit year by denying [him] a share of the IBQ.” However, at the time of filing the appeal, Appellant was no longer an ATL category LAP holder. Further, at the hearing, Appellant testified that he appealed the IAD on behalf of the current permit holder; however, it is reasonable to conclude that Appellant’s appeal on behalf of the current permit holder is significantly attenuated from Appellant’s interests. Therefore, I find that the IAD does not directly and adversely affect Appellant.

Thus, I find that Appellant does not have standing to appeal the instant IAD and the appeal is moot. However, even if Appellant did have standing to appeal the IAD, his appeal fails on the merits.

For an IBQ shareholder’s vessel to be considered an “eligible vessel,” the Regulation provides that the vessel must have been issued a valid Atlantic Tunas Longline category LAP when set(s) occurred during the relevant 36-month period.⁷⁴ Additionally, under 50 C.F.R. § 635.15(b), eligibility for IBQ share requires that a vessel must have fished at least one set during a recent 36-month period using pelagic longline gear. The Regulation also accounts for “circumstances where a LAP is transferred from one vessel to another during the relevant 36 month period,” providing that “the eligible vessel(s) is that which deployed the pelagic longline sets.”⁷⁵

While F/V [REDACTED] (vessel no. [REDACTED]) had a valid ATL category LAP, effective March 27, 2023, Appellant did not claim and the record does not establish that this vessel deployed any pelagic longline sets prior to October 31, 2023—the end of the relevant qualifying 36-month period. Appellant provided evidence, and HMS confirmed, that the previous vessel associated with Permit, F/V [REDACTED] (vessel no. [REDACTED]), deployed a total of [REDACTED] pelagic longline sets in 2022; however, Appellant sold that vessel in March 2023. Appellant does not have standing to file an appeal for 2024 IBQ share on account of pelagic longline sets deployed from a vessel that he sold because Appellant no longer has an interest in that vessel.

Appellant did not provide any evidence to support the proposition that permit holders are eligible for IBQ allocation based solely on the utilization of the ATL category LAP irrespective of which vessel engaged in the fishing activity. If Appellant had standing to appeal the IAD, he would not have met his burden of proving by a preponderance of the evidence that NMFS incorrectly

⁷¹ Appeal Communications Tab, SERO Permit Office emails to NAO, dated March 26, 2024 (Federal Fisheries Permit effective January 30, 2024) and April 23, 2024, Application 6289, pp. 9-10.

⁷² 15 C.F.R. § 906.3(b)(3).

⁷³ Appeal Communications Tab, SERO Permit Office email to NAO, dated March 26, 2024.

⁷⁴ 50 C.F.R. § 635.15(b)(1) (2024).

⁷⁵ *Id.*

