



(Regulation).<sup>5</sup> The Regulation was codified at 50 C.F.R. § 635.15, and became effective January 1, 2023.<sup>6</sup>

On October 18, 2023, NMFS' Office of Sustainable Fisheries Highly Migratory Species Division (HMS) sent an email to IBQ shareholders explaining the procedures NMFS would use to calculate "2024 base allocations to pelagic longline vessels participating in the IBQ program."<sup>7, 8</sup> In this email, HMS detailed that:

NOAA Fisheries will soon develop the initial IBQ allocations for 2024, consistent with the process outlined in Amendment 13 to the 2006 Consolidated Atlantic HMS Fishery Management Plan. This notice describes the data NOAA Fisheries intends to use for 2024 base allocations to pelagic longline vessels participating in the IBQ program.

### **How is IBQ calculated?**

Each year, the annual Longline category quota (209.3 mt) is divided proportionally by individual vessel fishing effort to calculate IBQ allocations. Proportional individual vessel fishing effort is based upon the number of longline sets conducted by vessels in the preceding 36-month period, as reported through mandatory HMS Logbooks and Vessel Monitoring System (VMS) set reports.

For 2024 IBQ allocations, NOAA Fisheries will examine individual vessel effort through **November 1, 2023**. This means that the number of reported sets by individual vessels will be compiled for the 36-month period spanning November 1, 2020[,] through October 31, 2023, using a combination of HMS Logbook and [Vessel Monitoring System (VMS)] data as follows:

- HMS Logbook data will be used for November 1, 2020[,] through December 31, 2022.
- Due to the normal data processing time lags for quality control procedures, 2023 HMS Logbook data will not be available for use in calculations for 2024 IBQ allocations. Instead, more timely VMS set data will be used for the period spanning January 1 through October 31, 2023. Therefore, **vessel owners/operators need to ensure that their mandatory VMS reporting is up to**

---

<sup>5</sup> 87 Fed. Reg. 59966 (Oct. 3, 2022).

<sup>6</sup> See 50 C.F.R. § 635.15 (2024).

<sup>7</sup> IAD Tab, email from HMS to IBQ shareholders titled "Individual Bluefin Quota Allocation Procedures for the 2024" (Oct. 18, 2023).

<sup>8</sup> HMS records indicate that Appellant was among the IBQ shareholders who received HMS' October 18, 2023, notice of 2024 IBQ allocation procedures. IAD Tab, email from HMS to NAO titled "Fwd: Individual Bluefin Quota Allocation Procedures for the 2024" (Apr. 16, 2024).

**date and accurate to ensure accurate 2024 IBQ base allocations.** Vessel owners/operators that need to update their VMS report data may do so by sending the updated reports from their VMS unit as they would for a normal report.<sup>9, 10</sup>

Thereafter, on December 21, 2023, HMS sent an email to Appellant titled “2024 Individual Bluefin Quota (IBQ) determination.”<sup>11</sup> Attached to this email was Appellant’s Initial Administrative Determination (IAD) detailing Vessel’s 2024 IBQ share and resultant allocation.<sup>12</sup> In the IAD, HMS informed Appellant that it had determined that Vessel had reported [REDACTED] eligible pelagic longline sets between the qualifying period of November 1, 2020, to October 31, 2023, and “had a valid permit at the time of this fishing activity.”<sup>13</sup> The IAD further indicated that the breakdown of Vessel’s [REDACTED] eligible pelagic longline sets consisted of [REDACTED] eligible Gulf of Mexico (GOM) sets and [REDACTED] eligible Atlantic (ATL) sets in 2020, [REDACTED] eligible GOM sets and [REDACTED] eligible ATL sets in 2021, [REDACTED] eligible GOM sets and [REDACTED] eligible ATL sets in 2022, and [REDACTED] eligible GOM sets and [REDACTED] eligible ATL sets in 2023.<sup>14</sup>

The IAD specified that Vessel’s 2024 IBQ share was [REDACTED] percent of the Longline category quota, which equated to [REDACTED] pounds of IBQ allocation.<sup>15</sup> HMS further indicated that the regional designation for Vessel’s share was comprised of [REDACTED] percent ATL and [REDACTED] percent GOM shares, equating to [REDACTED] pounds of ATL IBQ and [REDACTED] pounds of GOM IBQ.<sup>16</sup>

On January 17, 2024, Appellant filed an appeal challenging the IAD’s determination of Vessel’s eligible pelagic longline sets and 2024 IBQ share.<sup>17</sup> Specifically, Appellant challenges HMS’ determination that Vessel deployed [REDACTED] eligible sets between January 1, 2023, and October 31, 2023.<sup>18</sup> Instead, Appellant asserts that his “records show [REDACTED] [t]otal Atlantic sets.”<sup>19</sup> Appellant adds, “There may have been some issues with VMS or Electronic Reports at sea that are at the heart of the discrepancy. [A]s it stands we will lose access to Blue[f]in quota.”<sup>20</sup> Appellant concludes his appeal by requesting that NAO “make a decision based on the NMFS logbook [r]ecords.”<sup>21</sup>

In support of his appeal, Appellant provided a handwritten record of Vessel’s 2023 “trips and sets as submitted to the logbook center for HMS fisheries.”<sup>22</sup> The document purports to show

<sup>9</sup> *Id.* (emphasis in original).

<sup>10</sup> HMS confirmed to NAO that Vessel’s VMS data was downloaded on November 1, 2023. Appeal Communications Tab, email from HMS to NAO titled “Re: Case File – 24-0003 [REDACTED]” (Apr. 22, 2024).

<sup>11</sup> IAD Tab, email from HMS to Appellant titled “2024 Individual Bluefin Quota (IBQ) determination” (Dec. 21, 2023).

<sup>12</sup> IAD Tab, IAD (dated Dec. 21, 2023).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Appeal Tab, Appeal Letter, p. 2 (dated Dec. 31, 2023; received Jan. 17, 2024).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* pp. 2, 6.

Vessel embarked on ████████ pelagic longline fishing trips between January 1, 2023, and October 31, 2023, and that during these trips Vessel recorded a total of ████████ eligible pelagic longline sets.<sup>23</sup> In addition, the document reflects that Vessel’s final fishing trip during the 2023 qualifying period began on ██████████, 2023, and ended on ██████████ 2023, with vessel recording ████████ eligible pelagic longline sets.<sup>24</sup>

On February 7, 2024, NAO sent to Appellant a letter acknowledging receipt of his appeal and requesting Appellant submit any additional material concerning his appeal by February 19, 2024.<sup>25</sup> Appellant submitted no additional material.

Thereafter, on April 8, 2024, and April 9, 2024, NAO extracted Vessel’s logbook data from the NMFS Southeast Fisheries Science Center (SEFSC) Southeast Fisheries Reporting System (SRS) to evaluate the pelagic longline sets Appellant reported to NMFS via logbook set forms for the period of January 1, 2023, to October 31, 2023.<sup>26</sup> The logbook data reflects that during this period, Vessel deployed ████████ total eligible pelagic longline sets.<sup>27</sup> These records further indicate that Vessel deployed its final ████████ eligible pelagic sets between ██████████ 2023, and ██████████, 2023.<sup>28</sup> SEFSC received the corresponding logbook forms for these ████████ sets on December 1, 2023.<sup>29</sup>

I have carefully reviewed Appellant’s written materials, as well as the information contained in the record, and have determined there is sufficient evidence to adjudicate this appeal. I therefore close the record and render this decision.<sup>30</sup>

#### ISSUE

The legal issue in this case is whether the IAD properly assessed Vessel’s eligible 2023 pelagic longline sets when determining Vessel’s 2024 IBQ share and resultant allocation.

#### 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.<sup>31</sup>
2. On October 3, 2022, NMFS published a final rule implementing the Regulation, which became effective on January 1, 2023.<sup>32</sup>

---

<sup>23</sup> *Id.* p. 6.

<sup>24</sup> *Id.*

<sup>25</sup> Appeal Communications Tab, Acknowledgement Letter (Feb. 7, 2024).

<sup>26</sup> Appeal Communications Tab, email from NAO titled “Logbook Records for ██████████ and ██████████” (Apr. 12, 2024).

<sup>27</sup> Appeal Communications Tab, Logbook Data for FV ██████████ 24-0001.

<sup>28</sup> *Id.* pp. 95-107.

<sup>29</sup> *Id.*

<sup>30</sup> 15 C.F.R. § 906.12(a) (2024).

<sup>31</sup> 86 Fed. Reg. 27686 (May 21, 2021).

<sup>32</sup> 87 Fed. Reg. 59966 (Oct. 3, 2022).

3. The Regulation was codified at 50 C.F.R. § 635.15.<sup>33</sup>
4. HMS concluded that mandatory VMS set reports were the best available data to use in determining eligible sets for the period spanning January 1, 2023, through October 31, 2023.<sup>34</sup>
5. On December 21, 2023, HMS issued to Appellant the IAD indicating that Vessel reported a total of █████ eligible ATL pelagic longline sets from January 1, 2023, to October 31, 2023.<sup>35</sup>
6. The IAD stated that Vessel's 2024 IBQ share was █████ percent of the Longline category quota, which equated to █████ pounds of IBQ allocation.<sup>36</sup>
7. HMS reported that it downloaded Vessel's VMS data on November 1, 2023.<sup>37</sup>
8. Appellant provided evidence indicating that Vessel deployed █████ eligible pelagic longline sets from January 1, 2023, to October 31, 2023.<sup>38</sup>
9. NMFS SEFSC logbook records show that Vessel deployed █████ eligible pelagic longline sets from January 1, 2023, to October 31, 2023.<sup>39</sup>
10. NMFS SEFSC logbook records reflect that Vessel deployed █████ eligible pelagic longline sets between █████ 2023, and █████ 2023, and that SEFSC received the corresponding logbook forms for these sets on December 1, 2023.<sup>40</sup>

#### PRINCIPLES OF LAW

The Regulation states that an Atlantic Tunas Longline category permit holder who 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.”<sup>41</sup> In order for an IBQ shareholder's vessel to be deemed an eligible vessel, it must have been issued a valid Atlantic Tunas Longline category permit when the pelagic longline sets occurred during the relevant 36-month period.<sup>42</sup>

The eligible 36-month period “is a rolling period that changes annually, and is selected by NMFS based on the availability of recent data and time required by NMFS” to conduct eligibility and

---

<sup>33</sup> 50 C.F.R. § 635.15 (2024).

<sup>34</sup> Appeal Communications Tab, email from HMS to IBQ shareholders titled “Individual Bluefin Quota Allocation Procedures for the 2024” (Oct. 18, 2023).

<sup>35</sup> IAD Tab, IAD (dated Dec. 21, 2023).

<sup>36</sup> *Id.*

<sup>37</sup> Appeal Communications Tab, email from HMS to NAO titled “Re: Case File – 24-0003 █████” (Apr. 22, 2024).

<sup>38</sup> Appeal Tab, Appeal Letter, p. 6 (dated Dec. 31, 2023; received Jan. 17, 2024).

<sup>39</sup> Appeal Communications Tab, Logbook Data for FV █████ 24-0001.

<sup>40</sup> *Id.* pp. 95-107.

<sup>41</sup> 50 C.F.R. § 635.15(b)(1) (2024).

<sup>42</sup> *Id.*

share determinations.<sup>43</sup> When making these determinations, NMFS “will review the relevant 36 months of best available data,” which may consist of “a single data source such as VMS data, . . . [or] may include other available data such as logbook, [electronic monitoring], or permit data, in order to accurately determine a vessel’s eligibility status and shares.”<sup>44</sup>

An owner of an Atlantic tunas permitted vessel must maintain fishing records on logbook forms for daily fishing activities. Entries “must be entered on the logbook form within 48 hours of completing that day’s activities or before offloading, whichever is sooner.”<sup>45</sup> Additionally, logbook forms must be submitted postmarked to NMFS no later than seven days of offloading all Atlantic HMS.<sup>46</sup>

NMFS calculates IBQ shares for each IBQ shareholder using “the total number of each eligible vessel’s pelagic longline sets during the relevant 36 month period, and the relative amount (as a percentage) those pelagic longline sets represent compared to the total number of pelagic longline sets made by all IBQ shareholders’ eligible vessels.”<sup>47</sup> NMFS only counts one set per calendar day when calculating a vessel’s total number of pelagic longline sets.<sup>48</sup> In addition, NMFS will only count sets that occurred when a vessel was issued a valid Atlantic Tunas Longline category permit.<sup>49</sup>

The Regulation defines a shareholder’s annual IBQ allocation as “the amount of [bluefin tuna] . . . in metric tons corresponding to [the] IBQ shareholder’s share percentage, distributed to their vessel to account for incidental landings and dead discards of [bluefin tuna] during a specified calendar year.”<sup>50</sup> NMFS calculates a shareholder’s IBQ allocation by multiplying the shareholder’s IBQ share percentage by the baseline Longline category quota for the subject year.<sup>51</sup>

In the last quarter of each year, NMFS issues IADs to Atlantic Tunas Longline category permit holders notifying them of their IBQ shares and allocations, as well as the regional designations of those shares and allocations, for the subsequent year.<sup>52</sup> ATL permit holders may appeal their IADs within 45 days after the date NMFS issues the IADs.<sup>53</sup> Permit holders may base their appeal on ownership of an active vessel with a valid ATL permit; IBQ share percentage; IBQ allocations; regional designations of their shares and allocations; or NMFS’ determination of the pelagic longline sets legally made by the permitted vessel.<sup>54</sup> Hardship factors, however, are not valid bases for permit holders to appeal their IADs.<sup>55</sup>

---

<sup>43</sup> Id. § 635.15(c).

<sup>44</sup> Id.

<sup>45</sup> 50 C.F.R. § 635.5(a)(1) (2024).

<sup>46</sup> Id.

<sup>47</sup> 50 C.F.R. § 635.15(c)(1) (2024).

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id. § 635.15(d).

<sup>51</sup> Id.

<sup>52</sup> Id. § 635.15(e).

<sup>53</sup> Id. § 635.15(e)(1).

<sup>54</sup> Id. § 635.15(e)(1)(i).

<sup>55</sup> Id.

Regarding issues of fact, appellants bear the burden of proving by a preponderance of the evidence that they should prevail.<sup>56</sup> Preponderance of the evidence is defined as “the relevant evidence in the NAO case record, considered as a whole, that shows that a contested fact is more likely to be true than not true.”<sup>57</sup>

NAO will issue a written determination on whether the appellant has shown by a preponderance that the IAD is inconsistent with applicable laws and regulations.<sup>58</sup> In so doing, “NAO shall give deference to the reasonable interpretation(s) of applicable ambiguous laws and regulations made by the office issuing the initial administrative determination.”<sup>59</sup>

## ANALYSIS

### ***Does the IAD properly assess Vessel’s eligible 2023 pelagic longline sets when determining Vessel’s 2024 IBQ share and resultant allocation?***

The Regulation specifies that an Atlantic Tunas Longline category permit holder’s vessel is eligible for IBQ share if that vessel fished at least one set during a recent 36-month period using pelagic longline gear, and was issued a valid Atlantic Tunas Longline category permit at the time the fishing activity occurred. The IAD states that Vessel reported a total of ██████ eligible pelagic longline sets during the qualifying period of November 1, 2020, to October 31, 2023, and possessed a valid permit at the time this fishing activity occurred. The IAD further indicates that Vessel’s ██████ eligible sets were comprised of ██████ eligible GOM sets and ██████ eligible ATL sets in 2020, ██████ eligible GOM sets and ██████ eligible ATL sets in 2021, ██████ eligible GOM sets and ██████ eligible ATL sets in 2022, and ██████ eligible GOM sets and ██████ eligible ATL sets in 2023.

Pursuant to NAO’s Rules of Procedure, Appellant has the burden of proving by a preponderance of the evidence that HMS incorrectly applied the Regulation when determining Vessel’s eligible pelagic longline sets. In evaluating such a claim, NAO’s Rules of Procedure require that I “give deference to the reasonable interpretation(s) of applicable ambiguous laws and regulations made by the office issuing the [IAD].”

At issue in this case is whether IAD properly assessed Vessel’s eligible pelagic longline sets between January 1, 2023, and October 31, 2023, when determining Vessel’s 2024 IBQ share and resultant allocation.<sup>60</sup> To resolve this issue, I must determine whether HMS’ methodology for calculating eligible 2023 pelagic longline sets is reasonable under the Regulation.

According to the Regulation, NMFS must use the “best available data” when conducting IBQ eligibility and share determinations. The Regulation explains that this data may be comprised of a “a single data source such as VMS data, . . . [or] may include other available data such as logbook, [electronic monitoring], or permit data.” On October 18, 2023, HMS sent an email to Appellant and other IBQ shareholders to inform them that HMS would use vessel logbook data

---

<sup>56</sup> 15 C.F.R. § 906.14 (2024).

<sup>57</sup> *Id.* “Appellant has the obligation to obtain and present evidence to support the claims in his or her petition.” *Id.*

<sup>58</sup> *Id.* § 906.15(a).

<sup>59</sup> *Id.*

<sup>60</sup> Appellant did not contest HMS’ determination of Vessel’s eligible 2021 and 2022 pelagic longline sets.

to determine eligible pelagic longline sets for November 1, 2020, through December 31, 2022, but would only rely on VMS data to determine eligible pelagic longline sets deployed from January 1, 2023, to October 31, 2023. HMS explained that it was relying solely on the “more timely” VMS data to determine 2023 eligible pelagic longline sets to avert “the normal data processing time lags for quality control procedures” associated with evaluating vessel logbook data.

HMS, in accordance with the procedures laid out in its October 18, 2023, email, extracted Vessel’s VMS data on November 1, 2023, and used it to determine that Vessel had deployed ██████ eligible pelagic longline sets between January 1, 2023, and October 31, 2023. Appellant asserts in his appeal, however, that Vessel deployed an additional ██████ eligible sets during this period. In support of his claim, Appellant provided documentary evidence consisting of a handwritten record of Vessel’s 2023 pelagic longline fishing trips. The document purports to show that between January 1, 2023, and October 31, 2023, Vessel embarked on ██████ pelagic longline fishing trips and deployed ██████ total eligible pelagic longline sets. The logbook data that NAO extracted from the NMFS SEFSC SRS lends support to Appellant’s claim. Like Appellant’s handwritten record, this logbook data reflects that between January 1, 2023, and October 31, 2023, Vessel deployed a total of ██████ eligible pelagic longline sets. Nonetheless, this evidence, despite confirming an ██████-set difference between Vessel’s VMS and logbook data, is not sufficient to establish that HMS incorrectly applied the Regulation when determining Vessel’s eligible 2023 pelagic longline sets.

As HMS explained in its October 18, 2023, email to IBQ shareholders, it determined that it would only rely on VMS data to determine vessels’ eligible 2023 sets in order to avoid “the normal processing time lags for quality control procedures” associated with retrieving and analyzing logbook data. An examination of the logbook forms that Appellant submitted to SEFSC for Vessel’s final fishing trip during the 2023 qualifying period highlights the reasonableness of HMS’ decision. These logbook forms reflect that during this fishing trip, which occurred between ██████ 2023, and ██████ 2023, Vessel deployed ██████ eligible pelagic longline sets. Vessel’s logbook records further indicate, however, that SEFSC did not receive the individual logbook forms for these ██████ sets until December 1, 2023—30 days after HMS retrieved Vessel’s 2023 VMS data on November 1, 2023, and 20 days prior to HMS issuing the IAD on December 21, 2023.<sup>61</sup> Had HMS relied on logbook data to calculate Vessel’s eligible 2023 pelagic longline sets, the time lapse between when Vessel deployed these ██████ sets and when SEFSC received the corresponding logbook submissions could have resulted in significant processing delays for HMS. Such processing delays could have, in turn, affected HMS’ quality control procedures and hindered its ability to timely issue 2024 IBQ and allocation determinations to IBQ shareholders.

Accordingly, I find HMS’ determination that VMS set reports were the best available data to use for calculating vessels’ eligible 2023 pelagic longline sets to be both reasonable and consistent with the Regulation. Moreover, I find that because HMS’ methodology for determining eligible 2023 sets is reasonable, HMS properly assessed Vessel’s 2023 eligible pelagic longline sets from January 1, 2023, to October 31, 2023, as reflected in the VMS data extracted by HMS on November 1, 2023.

---

<sup>61</sup> Appeal Communications Tab, Logbook Data for FV ██████ 24-0001, pp. 95-107.



In addition, to the extent Appellant contends that “issues with VMS or Electronic Reports at sea” may have led to the discrepancy between his records and the IAD’s determination of his eligible 2023 pelagic longline sets, I note that Appellant provided no evidence to lend support to his claim. Likewise, the case record contains no evidence showing that any such VMS error occurred.

### CONCLUSIONS OF LAW

The IAD is consistent with the Regulation because a preponderance of the evidence establishes that the IAD properly assessed Vessel’s eligible 2023 pelagic longline sets when determining Vessel’s 2024 IBQ share and resultant allocation.

### ORDER

The IAD issued December 21, 2023, is **UPHELD**. Appellant may submit a Motion for Reconsideration.<sup>62</sup> Any Motion for Reconsideration must be postmarked or transmitted by fax to NAO no later than **May 24, 2024**.<sup>63</sup> 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.<sup>64</sup>

ESSMYER.JOSEPH.KIRK. [REDACTED]

Digitally signed by

ESSMYER.JOSEPH.KIRK. [REDACTED]

Date: 2024.05.14 11:39:09 -04'00'

\_\_\_\_\_  
J. Kirk Essmyer  
Administrative Judge

Date Issued: **May 14, 2024**

<sup>62</sup> 15 C.F.R. § 906.16(a) (2024).

<sup>63</sup> Id.

<sup>64</sup> Id. § 906.16(b).