

In re Application of)	
)	
)	Appeal No. 23-0001
)	
F/V)	DECISION
Permit Number ATL-)	
)	
Appellant)	
)	

⁷ IAD citing 87 Fed. Reg. 59966 (Oct. 3, 2022) (codified at 15 C.F.R. pt. 635.15).

a valid permit during this time.⁸ The IAD also stated that the 2023 IBQ share for Permit is percent of the Longline category, which is equivalent to pounds of IBQ allocation.⁹ The IAD further stated that the regional designation of the share is comprised of percent ATL shares and percent GOM shares, which equates to pounds of ATL IBQ and pounds of Gulf of Mexico (GOM) IBQ.¹⁰ HMS noted Appellant had the right to appeal the IAD.¹¹

On January 11, 2023, Appellant appealed the IAD.¹² In Appellant's appeal letter (Letter), he stated that he purchased Permit in May 2021, that Permit's prior owner (Prior Owner) did not assign Permit to a vessel, and that Appellant kept Permit in "NO VESS" status because he did not own a vessel at that time.¹³ Appellant further stated in Letter that shortly after he purchased Permit he "exchanged several emails with one of the *Fishery Management Specialists* at the HMS Office"...who never "informed [him] that [he] could lose [his] IBQ due to a lack of fishing activity over the next several months."¹⁴ Appellant further indicated in Letter that HMS never sent him any correspondence concerning the new regulations governing the IBQ program.¹⁵ Finally, Appellant maintains in Letter that a " allocation of IBQ would represent a significant loss of potential revenue and substantially decrease the value of [his] permit," and that "had [he] known [that he] was potentially at risk of losing IBQ [he] would have assigned the permit to a vessel and either leased the quota or fished it [him]self."¹⁶

On January 12, 2023, NAO sent a letter to Appellant notifying him that the office had received his appeal, and requesting that he submit any additional documentation or information in support of the appeal to NAO by January 23, 2023.¹⁷ Appellant provided no additional documentation or information.

I have determined that the information in the record is sufficient to render a decision. I therefore close the record and render this decision. In reaching my decision, I have carefully reviewed the entire record,¹⁸

ISSUES

The legal issue in this case is whether Vessel associated with Permit is eligible for 2023 IBQ share and resultant allocation.

⁸ IAD Tab, IAD

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Appeal Tab, Appellant's appeal letter, dated December 20, 2022, and received January 11, 2023.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Appeals Correspondence Tab, Letter from NAO to Appellant, dated January 10, 2023.

¹⁸ 15 C.F.R. § 906.11(a)(1) (2014).

FINDINGS OF FACT

1. On May 21, 2021, NMFS published proposed a rule to modify Atlantic Highly Migratory Species bluefin tuna management measures applicable to bluefin fisheries.¹⁹
2. The proposed rule states that ATL permit holders who NMFS determines had active permits associated with a vessel during a recent 36 months period are eligible to receive an annual IBQ share.²⁰
3. The proposed rule defines active vessels as “vessels that have used pelagic longline or greenstick gear and have designated species landings.”²¹
4. Appellant’s IAD indicates that Vessel reported pelagic longline sets from November 1, 2019 to October 31, 2022.²²
5. Appellant purchased Permit in May 2021.²³
6. Prior Owner did not assign Permit to a vessel.²⁴
7. Subsequent to Appellant purchasing Permit, he kept it in “NO VESS” status because he did not own a vessel.²⁵

PRINCIPLES OF LAW

ATL permit holders who NMFS determines had active permits associated with a vessel during a recent 36-month period are eligible to receive an annual IBQ share.²⁶ Active vessels are “vessels that have used pelagic longline or greenstick gear and have designated species landings.”²⁷

ATL permit holders who fished at least one set during a recent 36-month period using pelagic longline gear are eligible to receive annual IBQ share.²⁸ “The 36 month time 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 determinations.”²⁹

In the event that an ATL permit is transferred from one vessel to another during the qualifying period, the eligible vessel is the one which deployed pelagic longline sets.”³⁰

¹⁹ 86 Fed. Reg. 27686-01 (May 21, 2021).

²⁰ 86 Fed. Reg. 27686-01, 27709 (May 21, 2021).

²¹ Id.

²² IAD tab, IAD.

²³ Appeal Tab, Appellant’s appeal letter, dated December 20, 2022, and received January 11, 2023.

²⁴ Id.

²⁵ Id.

²⁶ 86 Fed. Reg. 27686-01, 27709 (May 21, 2021).

²⁷ Id.

²⁸ 50 C.F.R. § 635.15(b)(1).

²⁹ 50 C.F.R. § 635.15(c).

³⁰ 50 C.F.R. § 635.15(b)(1).

Appeals based on hardship will not be considered.³¹

ANALYSIS

Is Vessel associated with Permit eligible for 2023 IBQ share and resultant allocation?

Under 50 C.F.R. § 635.15(c), 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 record establishes that Vessel reported pelagic longline sets from November 1, 2019 to October 31, 2022. Vessel, therefore, is not eligible for 2023 IBQ share and resultant allocation.

Appellant argues that shortly after he purchased Permit he “exchanged several emails with one of the *Fishery Management Specialists* at the HMS Office”...who never “informed [him] that [he] could lose [his] IBQ due to a lack of fishing activity over the next several months.” Appellant further claims that HMS never sent him any correspondence concerning the new regulations governing the IBQ program.

Appellant has provided no evidence to support the proposition that NMFS is required to inform him of potential risks concerning IBQ share. Further, even if Appellant were to provide evidence establishing that NMFS had such a requirement, the record establishes that on May 21, 2021, NMFS published a rule specifying that ATL permit holders must have vessels with designated species landings during a recent 36-month period to receive annual IBQ share. Therefore, the record establishes that NMFS provided notice of IBQ share eligibility requirements.

Appellant also maintains that a “ allocation of IBQ would represent a significant loss of potential revenue and substantially decrease the value of [his] permit.” I understand Appellant’s financial concern, however, the sole issue I am authorized to resolve in this appeal is whether NMFS correctly applied the regulation in Appellant’s case. Further, under 50 C.F.R. § 635.15(e)(1)(i), I am explicitly barred from considering hardship as a basis for appeal. Therefore, Appellant’s arguments do not provide a basis to reverse the IAD.

CONCLUSIONS OF LAW

Appellant does not qualify for IBQ share because he did not prove by a preponderance of the evidence that Vessel was active between November 1, 2019, and October 31, 2022. The IAD is consistent with the regulation.


ORDER

The IAD issued December 13, 2022, is upheld. Appellant may submit a Motion for Reconsideration.³² Any Motion for Reconsideration must be transmitted by email or fax to NAO

³¹ 50 C.F.R. § 635.15(e)(1)(i).

³² 15 C.F.R. § 906.16 (2014).

no later than March, 23, 2023. 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: March 13, 2023