

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of

[REDACTED]

Appellant

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Appeal No. 20-0001

DECISION

STATEMENT OF THE CASE

The National Appeals Office (NAO) is a division within the National Marine Fisheries Service (NMFS) Office of Management and Budget, and is located in NOAA's headquarters in Silver Spring, Maryland. The Regional Administrator of NMFS' West Coast Regional Office (WCRO) may affirm, reverse, modify, or remand this decision.¹

[REDACTED] (Appellant), [REDACTED], filed the appeal under review. Appellant requests review of WCRO Sustainable Fisheries Division's (SFD) 2019 vessel account non-renewal and 2020 Quota Pounds (QP) carryover non-eligibility determination for F/V [REDACTED], vessel account number [REDACTED] (Vessel).

On September 6, 2019, WCRO SFD sent to Appellant a "Renewal Reminder" letter (Letter) reminding Appellant of the need to renew Vessel's account through Appellant's online account between October 1, and November 30, 2019.² The Letter also informed Appellant of the steps he needed to take to renew Vessel's account.³

On February 20, 2020, WCRO SFD sent to Appellant an Initial Administrative Determination Notice of Right to Appeal (IAD) informing Appellant that vessel account number [REDACTED] "was not renewed during the renewal period in 2019[,] and [wa]s therefore not eligible for carryover in 2020."⁴ The IAD explained that under the Shorebased Individual Fishing Quota (IFQ) regulations found at 50 C.F.R. § 660.140(e)(3) (Regulation), vessel accounts "must be renewed between October 1 and November 30 of each year in order to ensure the vessel account is active on January 1 of the following year."⁵ According to the IAD, NMFS will deactivate any vessel accounts not renewed before the November 30 deadline, and "any QP in the vessel

¹ 15 C.F.R. § 906.17(c)(1) (2014).

² Pre-IAD Communication Tab, *Renewal Reminder – Vessel Account: [REDACTED]*, dated September 6, 2019.

³ *Id.*

⁴ IAD Tab, *Initial Administrative Determination Notice of Right to Appeal*, dated February 20, 2020.

⁵ *Id.*

account[s] will expire and surplus QP will not be available for carryover.”⁶ The IAD further informed Appellant of his right to appeal the IAD to NAO pursuant to 15 C.F.R. Part 906.⁷

Subsequently, on March 16, 2020, Appellant filed the instant appeal requesting NMFS reinstate Vessel’s eligibility for carryover QP.⁸ In his appeal letter, the Appellant asserts that he and his colleague “went online to renew our account and were certain we completed all the necessary steps . . . as outlined on NOAA’s vessel account website[,] [but] [u]nfortunately our renewal did not register.”⁹ Appellant states that after he discovered Vessel’s account had not been renewed, he contacted WCRO SFD employee [REDACTED], who informed Appellant that WCRO’s database staff had “confirm[ed] that there were no errors in the Vessel Accounting System.”¹⁰ According to Appellant, [REDACTED] further informed him that WCRO database staff were able to determine that someone had accessed the vessel account to renew the password, but that user had not downloaded Ownership Interest Form (OI Form).¹¹ Appellant states [REDACTED] then stated that “without clicking a box to certify that the [ownership interest] information was correct, or mailing a completed OI Form into the permits office with any changes, the renewal process could not have been completed.”¹²

Appellant recalled that in previous years, WCRO’s vessel account website experienced “an issue” whereby account holders using the Google Chrome browser were unable to download OI Forms unless they did so in another browser.¹³ Appellant stated he “believe[d]” this issue had disabled the button acknowledging that the vessel account owner had reviewed ownership information.¹⁴ In support of his assertion, the Appellant reported that [REDACTED] had told him that WCRO was “working on ways to make it more explicit what vessel account holders need to do to complete the . . . renewal process[,] . . . [and] providing more reminders to people to make them aware that their vessel account has not yet been renewed.”¹⁵

Appellant maintained that although he “take[s] full blame for not correctly completing the renewal process,” he did not believe Vessel should lose its carryover QP “because of an administrative error.”¹⁶ Appellant explained that in the past, [REDACTED] has utilized carryover QP “to supplement our bycatch species quota amounts that allow us to continue to participate in the Pacific Whiting Fishery without having to lease or buy additional quota.”¹⁷ Appellant expressed concern that not being able to access Vessel’s carryover QP, “will cause reductions in wages for all crew working aboard [Vessel], additional fuel burn in order to avoid bycatch and/or shutting us down before all of our fish is caught.”¹⁸ Appellant closed his appeal

⁶ *Id.*

⁷ *Id.*

⁸ Appeal Tab, *Appellant’s Appeal Letter*, p. 1, dated and received March 16, 2020.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* Appellant noted that “there were no changes in our ownership from the previous year[,] so the information NMFS had on file was accurate.”

¹⁶ *Id.* at p. 2.

¹⁷ *Id.*

¹⁸ *Id.*

letter by indicating the negative consequences of Vessel losing its carryover QP “seems overly punitive in light of the benign nature of why we are we are being punished.”¹⁹ In support of his appeal letter, Appellant attached printouts of his email conversations with [REDACTED] on January 29 and February 5, 2020.²⁰

On April 6, 2020, NAO sent to Appellant a letter acknowledging receipt of his appeal, and requesting Appellant submit any additional material concerning the appeal by April 13, 2020.²¹ Appellant submitted no additional material. Thereafter, on April 14, 2020, I issued to Appellant a notice scheduling a telephonic hearing for April 29, 2020, at 10:00 a.m. (Eastern).²²

On April 29, 2020, Appellant appeared for the scheduled hearing accompanied by [REDACTED], Appellant’s [REDACTED] and [REDACTED].^{23, 24} Appellant testified during the scheduled hearing that he was seeking to have Vessel’s eligibility for 2020 carryover QP reinstated; and argued that he tried to renew the vessel account within the requisite time frame, but was unable to do so because of an “error in the system.”²⁵

Appellant acknowledged receiving WCRO’s Letter in September 2019, and testified that he and [REDACTED] believed that they had successfully renewed Vessel’s account online sometime in early November 2019.²⁶ According to Appellant, he and [REDACTED] reviewed the OI Form, but failed to check the box confirming there had been no change in Vessel’s ownership interest.²⁷ Appellant averred that neither he nor [REDACTED] noticed the confirmation box, which Appellant described as being “inconspicuous.”²⁸

Appellant stated he did not learn their renewal attempt had been unsuccessful until January 29, 2020, when he tried to log into Vessel’s online account and received an electronic notification that the account’s password had not been renewed.²⁹ Appellant testified he contacted [REDACTED] that same day to inquire about Vessel’s account status, and [REDACTED] responded by sending him vessel account renewal documents to fill out and send back to WCRO SFD.³⁰

[REDACTED] testified that he has been renewing vessel accounts online since the inception of the IFQ program, and this instance was the first time he had missed a vessel account renewal deadline.³¹ [REDACTED] recalled that in the past he has experienced technical problems while

¹⁹ *Id.*

²⁰ *Id.* at pp. 3-6.

²¹ Appeal Communications Tab, *Acknowledgement Letter*, dated April 6, 2020.

²² Decisions, Orders, Notices Tab, *Notice Scheduling Hearing*, dated April 14, 2020.

²³ Audio recording of April 29, 2020, scheduled hearing.

²⁴ [REDACTED] also serves as the [REDACTED] for [REDACTED]. See State of Washington Secretary of State, *Corporations and Charities Filing System*, available at: <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation>.

²⁵ Audio recording of April 29, 2020, scheduled hearing.

²⁶ *Id.* Appellant was unable to recall, and provided no documentation establishing, the date he and [REDACTED] attempted to renew Vessel’s account.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

attempting to renew vessel account online, including the issues reported in Appellant's appeal letter related to using the Google Chrome browser to access the vessel account renewal website.³² ██████████ clarified, however, that he did not recall having any similar issues with using Google Chrome Vessel's account in 2019.³³ Appellant likewise testified that he and ██████████ had experienced no problems related to using Google Chrome to access vessel account renewal website.³⁴

Regarding the renewal attempt at issue, ██████████ testified that SFD's account renewal application page was set up in a way that allowed users to check the confirmation box and submit their renewal even though the renewal would "not go through" if users had not downloaded the OI Form.³⁵ ██████████ was unable to recall whether he and Appellant had checked the confirmation box indicating they had reviewed Vessel's OI Form, but indicated that vessel account owners were able to check the confirmation box and submit their renewal package even if they had not downloaded the OI Form.³⁶

Prior to concluding the hearing, I informed Appellant I would hold the record open until May 13, 2020, to allow Appellant an opportunity to collect and submit additional supporting documentation.³⁷ Appellant submitted no additional documentation.

Having carefully reviewed Appellant's testimony and supporting documents, as well as the information contained in the record, I have determined there is sufficient evidence to adjudicate this appeal. I therefore close the record and render this decision.³⁸

ISSUE

The issue in this case is whether Vessel qualifies for 2020 carryover QP. To resolve that issue, I must determine whether Appellant submitted a complete vessel account renewal package no later than November 30, 2019.

If Appellant did not submit a complete vessel account renewal package by November 30, 2019, Vessel does not qualify for 2020 carryover QP.

FINDINGS OF FACT

1. On September 6, 2019, WCRO SFD sent to Appellant a reminder that Vessel's account had to be renewed between October 1 and November 30, 2019.³⁹

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ 15 C.F.R. § 906.11(a)(1) (2014); 15 C.F.R. § 906.12(a) (2014).

³⁹ Pre-IAD Communication Tab, *Renewal Reminder – Vessel Account*: ██████████, dated September 6, 2019.

2. On February 20, 2020, WCRO SFD informed Appellant that Vessel's account had not been renewed prior to November 30, 2019, and, as a result, Vessel would not be eligible to receive 2020 carryover QP.⁴⁰

PRINCIPLES OF LAW

According to the Regulation, in order for a vessel to take part in NMFS' Shorebased IFQ Program, it "must be registered to an eligible limited entry trawl permit."⁴¹ Owners of qualifying vessels may request that NMFS establish a vessel account that enables vessel owners to track QP . . . pounds.⁴² Eligible vessel owners may request NMFS establish a vessel account at any time of year.⁴³ Vessel account holders are required to establish online access to their vessel accounts, which NMFS uses to "send messages to vessel owners in the Shorebased IFQ Program."⁴⁴

Vessel account holders must renew their vessel account each calendar between October 1 and November 30.⁴⁵ WCRO SFD sends renewal notifications to vessel account holders' most recent address of record by September 15 each year.⁴⁶ "Any vessel account for which SFD does not receive a vessel account renewal request by November 30 will have its vessel account inactivated by NMFS at the end of the calendar year[,] [and] NMFS will not issue QP . . . pounds to the inactivated vessel account."⁴⁷ Any surplus QP or IBQ in the inactivated vessel accounts will not be available for carryover.⁴⁸

Vessel account owners whose accounts have been inactivated may renew their vessel accounts the following year by submitting "a complete vessel account renewal package."⁴⁹ NMFS will only renew a vessel account if it receives a complete vessel account renewal package, which consists of "payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form . . . , and a complete economic data collection form."⁵⁰

ANALYSIS

In order to determine Vessel's eligibility for 2020 carryover QP I must determine whether Appellant submitted a complete vessel account renewal package by November 30, 2019, as required by the Regulation. As detailed above, in order for a vessel account renewal package to

⁴⁰ IAD Tab, *Initial Administrative Determination Notice of Right to Appeal*, dated February 20, 2020.

⁴¹ 50 C.F.R. § 660.140(e)(1) (2020).

⁴² *Id.*

⁴³ *Id.* at § 660.140(e)(2)(ii).

⁴⁴ *Id.* ("[I]t is important for vessel owners to monitor their online vessel account and all associated messages.").

⁴⁵ *Id.* at § 660.140(e)(3)(i)(A) ("A complete vessel account renewal package must be received by SFD no later than November 30 to be accepted by NMFS.").

⁴⁶ *Id.* at § 660.140(e)(3)(i)(B) ("[V]essel account owner[s] shall provide . . . notice of any address change within 15 days of the change.").

⁴⁷ *Id.* at § 660.140(e)(3)(i)(C).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at § 660.140(e)(3)(i)(D) ("The vessel account renewal will be considered incomplete until the required information is submitted.").

be considered complete, it must include “complete documentation of permit ownership” on the OI Form.⁵¹

Appellant contends he and ██████████ went online to renew vessel’s account prior to November 30, 2019.⁵² In his appeal letter and hearing testimony, Appellant appears somewhat uncertain whether they had checked the confirmation box during their renewal attempt. In the first paragraph of his appeal letter, Appellant states: “My colleague and I went online to renew our account and were certain that we completed all the necessary steps in order to do this as outlined on NOAA’s vessel account website.”⁵³ At the close of his appeal letter, however, Appellant indicates he “take[s] full blame for not correctly completing the renewal process,” but argues that “[f]orcing [them] to potentially buy or lease additional quota for not ‘clicking a box’” could lead to significant economic hardship for ██████████. and their employees.⁵⁴

During the hearing, Appellant testified that he and ██████████ had reviewed the OI Form, but failed to check the box confirming there had been no changes to Vessel’s ownership interest. Appellant described the confirmation box as “inconspicuous” and averred that neither he nor ██████████ had noticed the box while completing the Vessel’s account renewal application.

██████████ was also unsure whether he and Appellant had checked the confirmation box after reviewing the OI Form. ██████████, however, appeared to attack the structure of the renewal website itself; testifying that he recalled the site was constructed in such a way that users could check the confirmation box and submit their renewal application without the users having downloaded their OI Form. ██████████ added that users who did this would be left unaware that their renewal application was incomplete.

The evidence, however, does not support Appellant’s claims. On September 6, 2019, WCRO SFD sent Appellant a reminder to “renew your vessel account for 2020 through your online account between October 1, 2019 and November 30, 2019.”⁵⁵ The renewal reminder then instructed Appellant:

To renew your Vessel Account:
- Log into your online vessel account between October 1, 2019 and November 30, 2019
- Click on the Renew Account tab and *follow the on-screen instructions*.⁵⁶

I reviewed screenshots of WCRO’s vessel account renewal website that illustrated the process Appellant would have been required to follow to renew Vessel’s account.⁵⁷ The first screen Appellant would have seen contains a general overview of the renewal process, and a set of

⁵¹ *Id.*

⁵² Neither Appellant nor ██████████ were able to recall the exact date they attempted to renew Vessel’s account.

⁵³ Appeal Tab, *Appellant’s Appeal Letter*, p. 1, dated and received March 16, 2020.

⁵⁴ *Id.* at p. 2.

⁵⁵ Pre-IAD Communication Tab, *Renewal Reminder – Vessel Account*: ██████████, dated September 6, 2019.

⁵⁶ *Id.* (emphasis added).

⁵⁷ Appeals Communication Tab, *Vessel Account Renewal Screenshots*.

reminders for vessel account holders.⁵⁸ Of particular note, this first screen informs vessel account holders that: “You will review the ownership interest information for the vessel owner by opening an Adobe PDF file. If what is presented is correct, *you will certify the form online.*”⁵⁹

The image displays two screenshots of a web application titled "Vessel Account Renewal".

Top Screenshot:

- Navigation Bar:** Balance, Catch Data, Initiate Transfers, Pending Transfers (0), **Renewals**, Messages (12), Update Account, IFQ Contact Information, Public Pages.
- Section Header:** Vessel Account Renewal
- Fields:** Vessel Name, Vessel Owner Name.
- Text:** All IFQ vessel accounts must be renewed no later than November 30 through the online renewal pages. To begin, click "start renewal" at the bottom of the page. Be aware that if you exit the renewal screens before certifying and submitting your online renewal, no information will be saved and you will need to start over. If you have questions or want to make sure your renewal was submitted, please call the West Coast Region Fisheries Permit Office at 206-526-4353.
- Warning:** You cannot renew a vessel account if you are not the current owner of the vessel. If you sold your vessel, you cannot renew. You must certify current vessel ownership as a part of the online renewal process.
- Section Header:** Renewal Overview
- Text:** Each page will have instructions, but here is an overview of what you can expect:
- List:**
 - Contact Information: Verify or edit the current contact information for the vessel owner. If changes are needed you will be able edit this information and it will be reflected on the ownership interest form presented in Step 3.
 - Small Business Administration Question: You will indicate whether the vessel owner is a small business or not.
 - Ownership Interest Information: You will review the ownership interest information for the vessel owner by opening an Adobe PDF file. If what is presented is correct, you will certify the form online. If the information presented is incorrect, you will need to print out the form, make all necessary changes, and mail it to FPO.

Bottom Screenshot:

- Navigation Bar:** Same as the top screenshot.
- List:**
 - Contact Information: Verify or edit the current contact information for the vessel owner. If changes are needed you will be able edit this information and it will be reflected on the ownership interest form presented in Step 3.
 - Small Business Administration Question: You will indicate whether the vessel owner is a small business or not.
 - Ownership Interest Information: You will review the ownership interest information for the vessel owner by opening an Adobe PDF file. If what is presented is correct, you will certify the form online. If the information presented is incorrect, you will need to print out the form, make all necessary changes, and mail it to FPO at the address given on the form by November 30th.
 - Renewal Certification: You will complete the online renewal and enter your name as an online signature to certify the renewal.
 - Renewal Confirmation: You will be presented with a confirmation page showing that your renewal application was submitted.
- Section Header:** Reminders
- List:**
 - If you exit the renewal screens before certifying and submitting your online renewal, no information will be saved, and you will need to start over.
 - If you have **multiple IFQ accounts** (quota share permits/accounts and/or vessel accounts) **each must be renewed separately.**
 - Please ensure that your browser will allow pop-up windows.
 - You must have a PDF Viewer (Adobe Acrobat Reader or similar) to open the OI form.
- Button:** Start Renewal

The website then guides the vessel account holder through the steps they must follow to renew their vessel account.⁶⁰ In Step 1 of the renewal process, Appellant would have been required to review and verify the contact information associated with Vessel’s account by checking a “Review Checkbox” at the bottom of the screen.⁶¹

⁵⁸ *Id.* at pp. 2-3.

⁵⁹ *Id.* at p. 2 (emphasis added).

⁶⁰ *Id.* at pp. 2-13.

⁶¹ *Id.* at pp. 4-5.

X

● Step 1

● Step 2

● Step 3

● Step 4

● Step 5

Account Manager Email

Please confirm the email address associated with this IFQ account. This email address is used by the system to communicate with the IFQ account manager, who may be different than the account owner. When a password needs to be reset a link will be sent to this email. The current account email address is [REDACTED]. If you need to change this email address please go to the [Update Account page](#).

Contact Information

The following information is used by the Fisheries Permit Office to correspond with the account owner. Please review the contact information below for accuracy. If correct, verify the information by checking the box below. If you need to make changes to this information click the "Edit" button and "Save" your changes. This information will be reflected on the ownership interest form that is presented in Step 3 of the renewal process.

Fields with an asterisk (*) cannot be blank.

Vessel Name

Vessel Registration Number

Vessel Owner Name

Business Address Line 1 *

Business Address Line 2 *

Business City *

Previous <
Cancel

Next >

X

● Step 1

● Step 2

● Step 3

● Step 4

● Step 5

Vessel Registration Number

Vessel Owner Name

Business Address Line 1 *

Business Address Line 2 *

Business City *

Business State *

Business Zip Code *

Business Phone Number *

Business Cell Number

Fax number

Business Email Address

Review Checkbox *

☒

I have reviewed the information above, and it is true and correct as given.

Edit
Save
Cancel Edit

Previous <
Cancel

Next >

The next step, Step 2, would have required Appellant to review and verify the account’s Small Business Certification information, and certify the accuracy of the information by checking another “Review Checkbox.”⁶²

The screenshot shows a five-step process. Step 1 is completed (green checkmark). Step 2 is the current step (blue dot). Steps 3, 4, and 5 are not yet started (grey dots).

business size standard:	receipts of \$11 million or less for all affiliated operations worldwide.	on a full time, part time, temporary, or other basis, at all affiliated operations worldwide.	on a full time, part time, temporary, or other basis, at all affiliated operations worldwide.	or professional organizations: Combined annual receipts of \$15 million or less. Other organizations: Combined annual receipts of \$7.5 million or less.
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*Includes catcher/processors and motherships
 **SBA size standards for nonprofits to inform whether the organization is "dominant in their field of operation"

Is your business or organization:

- Independently owned and operated, and
- not dominant in its field of operation (including any affiliates), and
- considered small by the standards listed in the table above?

Small Business Certification Question ☒ If you answered yes to all three questions, please check here.
☐ If you answered no to any of these questions, please check here.

Review Checkbox ☒ I have reviewed the information above and it is true and correct as given.

Buttons: Previous, Cancel, Next

In Step 3, Appellant would have first been advised that an OI Form listing any person with a 2% or greater ownership interest in Vessel “must be submitted to renew your vessel account.”⁶³ Appellant would have then been instructed to “click on the ownership interest form link . . . [o]pen the Adobe PDF file, review the information for accuracy, and return to this renewal screen.”⁶⁴ The renewal website provides account holders with a link to download their vessel’s OI Form and options to select whether the OI Form is correct or incorrect.⁶⁵ At the bottom of the Step 3 screen, Appellant would have been instructed to check a box indicating they “have reviewed the information above, and it is true and correct as given.”⁶⁶

⁶² *Id.* at p. 6.

⁶³ *Id.* at p. 7.

⁶⁴ *Id.*

⁶⁵ *Id.* at p. 8.

⁶⁶ *Id.*

Step 1 Step 2 Step 3 Step 4 Step 5

A trawl identification of ownership interest form must be submitted to renew your vessel account. Any individual who has 2% (or greater) ownership interest in the vessel account must be listed on this form.

The information displayed in the ownership interest form below shows the most recent information stored in the Fisheries Permit Office database. If any ownership interest information is incorrect or has changed, there is no way to enter these changes online as part of the renewal, and you will need to submit a new form by mail.

Please click on the ownership interest form link (blue link) below. Open the Adobe PDF file, review the information for accuracy, and return to this renewal screen. If the information in the file is correct as given, indicate this below and continue with the renewal. You will not need to mail any information separately if the form shown here is correct. However, if the information in the file is incorrect or incomplete, you will need to indicate this below, continue with the renewal, and then mail a new ownership interest form to NMFS postmarked no later than November 30.

Vessel Name
Vessel Registration Number
Vessel Owner Name

[Download and review Ownership Interest Form to proceed.](#) [Ownership Interest Form](#)

☐ Correct Ownership Interest Form. No Corrections Needed

[Previous](#) [Cancel](#) [Next](#)

Step 1 Step 2 Step 3 Step 4 Step 5

Vessel Name
Vessel Registration Number
Vessel Owner Name

[Download and review Ownership Interest Form to proceed.](#) [Ownership Interest Form](#)

☐ Correct Ownership Interest Form. No Corrections Needed

☒ Incomplete or Incorrect Ownership Interest Form. Additional Information or Corrections Necessary

The ownership interest information presented in this PDF link is incorrect or incomplete as given, and I will mail a new ownership interest form to NMFS postmarked no later than November 30 in order to complete this renewal request.

[Download a Blank Ownership Interest Form](#)

☐ I have reviewed the information above, and it is true and correct as given.

[Previous](#) [Cancel](#) [Next](#)

In Step 4 of the renewal process, Appellant would have been directed to certify the information they provided when completing the renewal request.⁶⁷ Again, Appellant would have been required to check a box declaring the information they provided was “true, correct and complete.”⁶⁸

⁶⁷ *Id.* at p. 9.

⁶⁸ *Id.*

Step 1 Step 2 Step 3 **Step 4** Step 5

To complete your online vessel account renewal, the named vessel owner or an authorized must attest to the renewal certification statement by typing their name in the authorized representative field and checking the box below. Entering a title is optional.

Vessel Name
Vessel Registration Number
Vessel Owner Name

Fields with an asterisk (*) cannot be blank.

Name of Authorized Representative *
Title of Authorized Representative

☒ By checking this box, I hereby declare, under penalties of perjury, that I am authorized to sign this form on behalf of the applicant, that I completed this form, and that the information contained herein is true, correct and complete to the best of my knowledge and belief.

Previous < Cancel Certify and Continue >

In the last step, Appellant would have received a confirmation message indicating that their vessel account renewal request was submitted.⁶⁹ This message also advises account holders to “review your renewal status page.”⁷⁰

Step 1 Step 2 Step 3 Step 4 **Step 5**

Congratulations your vessel account renewal request has been submitted. NMFS will review your renewal request and mail you a letter, either to confirm receipt and approval of the renewal, or to request missing information if the renewal was incomplete. Please review your renewal status page, and submit any owed ownership interest forms or economic data collection (EDC) forms. Also, if you plan to renew several IFQ accounts, remember to close your browser between each renewal.

Vessel Account Renewal Request Submission Confirmation Code

Finish & View Summary >

After submitting their vessel account renewal package, Appellant would have been able to return to Vessel’s account page and check the status of his renewal request by selecting the “Renewal

⁶⁹ Id. at p. 10.

⁷⁰ Id.

Status” tab at the top of the page.⁷¹ After selecting that Renewal Status tab, Appellant would have been provided information about his account renewal request, including the renewal submission date, ownership interest status, renewal status, and renewal approval date.⁷² The renewal status page also draws special attention to the “Ownership Interest Status;” explaining that:

If the status says **Completed Online**, you stated that the ownership interest form presented online was correct, and you do not need to mail a form to NMFS.

If the status says **Owed to NMFS**, you stated that the ownership information presented online was incorrect or incomplete, and you must mail a new ownership interest form to NMFS at the address below. You may click on the Blank Ownership Interest Form link below to print a blank form; or you may click on the Existing Ownership Interest Form link below to print the ownership interest form displayed in your renewal and make changes as needed. Either way, the mailed form must have an original signature.⁷³

NOAA HOME WEATHER OCEANS FISHERIES CHARTING SATELLITES CLIMATE RESEARCH COASTS CAREERS

NOAA PACIFIC COAST GROUND FISH INDIVIDUAL FISHING QUOTA NATIONAL MARINE FISHERIES SERVICE

Feedback Notices Help Log

Balance Catch Data Initiate Transfers Pending Transfers (0) **Renewal Status** Messages (12) Update Account IFQ Contact Information Public Pages

Renewal Submission Status

NMFS will review your renewal request and mail you a letter, either to confirm receipt and approval of the renewal, or to request missing information if the renewal was incomplete. Below is a summary of your renewal request. You may contact the Fisheries Permit Office with questions about your renewal status at (206) 526-4353.

Vessel Name
Vessel Registration Number
Vessel Owner Name
Renewal Submission Date
Ownership Interest Status
Renewal Status
Renewal Approval Date

Trawl Identification of Ownership Interest

Please note the Ownership Interest Status above.

⁷¹ *Id.* at p. 11. The “Renewal Status” tab replaces the “Renewal” tab vessel account holders used to complete their vessel account renewal applications.

⁷² *Id.* at pp. 11-12.

⁷³ *Id.* at p. 12 (emphasis in original).

The top screenshot shows the NOAA Pacific Coast Groundfish Individual Fishing Quota (IFQ) website. The navigation bar includes links for NOAA HOME, WEATHER, OCEANS, FISHERIES, CHARTING, SATELLITES, CLIMATE, RESEARCH, COASTS, CAREERS, Feedback, Notices, Help, and Log Out. The user is logged in, and the 'Renewal Status' tab is selected. The page title is 'Trawl Identification of Ownership Interest'. The text states: 'Please note the Ownership Interest Status above. If the status says **Completed Online**, you stated that the ownership interest form presented online was correct, and you do not need to mail a form to NMFS. If the status says **Owed to NMFS**, you stated that the ownership information presented online was incorrect or incomplete, and you must mail a new ownership interest form to NMFS at the address below. You may click on the Blank Ownership Interest Form link below to print a blank form; or you may click on the Existing Ownership Interest Form link below to print the ownership interest form displayed in your renewal and make changes as needed. Either way, the mailed form must have an original signature.' There are two buttons: 'Ownership Interest Form' and 'Blank Ownership Interest Form'.

The bottom screenshot shows the same website. The navigation bar is identical. The user is logged in, and the 'Renewal Status' tab is selected. The page title is 'Economic Data Collection(EDC)'. The text states: 'If you owe an ownership interest form, please mail the form to: USDOC-NOAA-NMFS Fisheries Permit Office 7600 Sand Point Way NE, Building 1 Seattle, WA 98115-0070'. Below this, it says: 'Below is the current status of your EDC form(s), and this status is subject to change. If you have any questions or concerns about the status of your EDC form(s) please contact the EDC team at the Northwest Fisheries Science Center directly at (866) 791-3726.' The 'Number of EDC forms(s) owed' is 0.

These screenshots show that SFD constructed a linear, step-by-step online vessel account renewal process, and provided users with detailed instructions on how to successfully complete each step. If Appellant had followed this process as directed, Vessel's OI Form would have been properly certified and a complete vessel account renewal package would have been submitted to SFD.⁷⁴

While Appellant contends he and [REDACTED] simply did not see the "inconspicuous" checkbox indicating they had reviewed the OI Form, the screenshots above demonstrate SFD's online vessel account renewal process required users to certify the information provided at each step of the process. Contrary to Appellant's claim, however, the checkbox certifying that users have reviewed the OI Form appears no more or less conspicuous than the other checkboxes Appellant would have had to interact with throughout the online renewal process.

⁷⁴ [REDACTED] testimony that this was the first vessel account renewal deadline he has missed since the inception of the Shorebased IFQ program demonstrates he was familiar, or should have been familiar, with the Regulation's vessel account renewal requirements.

It is also worth noting that SFD's vessel account renewal website also provides users with a mechanism to check the status of their vessel account renewal application. Had Appellant elected to check the status of Vessel's online account prior to November 30, 2019, he would have been alerted to the fact that he had not successfully completed the online vessel account renewal process. The fact that SFD's vessel account renewal website has a feature to allow users to check the status of their renewal application demonstrates that safeguards were in place to help users, like Appellant, avoid inadvertently submitting an incomplete renewal application.

Lastly, to the extent Appellant's appeal letter suggests WCRO SFD's vessel account renewal website's past compatibility issues with Google Chrome may have hindered their efforts to renew Vessel's account in 2019, Appellant provided no evidence showing any such compatibility issues had occurred. In fact, both Appellant and [REDACTED] testified during the hearing that they did not recall experiencing technical problems as a result of using Google Chrome to access Vessel's 2019 account renewal page.

It is Appellant's burden to show by a preponderance of the evidence that he submitted a complete vessel account renewal package, including a complete OI Form, between October 1 and November 30, 2019, as required by the Regulation. Appellant has not met this burden. While I recognize the potential financial hardship Vessel's ineligibility for 2020 carryover QP may cause Appellant, I am bound by the Regulation's renewal requirements and the facts of this case. Accordingly, I must uphold the IAD.

CONCLUSIONS OF LAW

I conclude that the IAD WCRO SFD issued to Appellant was consistent with the Regulation. In reaching my decision, I carefully examined the entire record and determined I must uphold the IAD because Appellant has not proven by a preponderance of the evidence that he submitted a complete renewal request for Vessel's account between October 1 and November 30, 2019.

ORDER

The IAD dated February 20, 2020, is **UPHELD**. Appellant may submit a Motion for Reconsideration.⁷⁵ Any Motion for Reconsideration must be postmarked or transmitted by fax to NAO no later than **June 5, 2020**. 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.

[REDACTED]
J. Kirk Essmyer
Administrative Judge

Date Issued: **May 26, 2020**

⁷⁵ 15 C.F.R. § 906.16 (2014).