

Appeals Process – IBQ Program and Cape Hatteras Gear Restricted Area Access

On publication of the final rule for Amendment 7, Atlantic Tunas Longline permit holders received letters conveying initial Individual Bluefin Quota (IBQ) shares and resultant allocations and determination of access to fish in the Cape Hatteras Gear Restricted Area (GRA). Permit holders wishing to (a) appeal their initial IBQ share or (b) appeal the decision on access to the Cape Hatteras GRA must initiate an appeals process by notifying the Highly Migratory Species (HMS) Management Division, in writing, of a request for an appeal. Appellants are encouraged to submit and track requests via certified mail. (*Note: IBQ and GRA appeals based on hardship factors will not be considered.*)

Summary Description of Appeals Process

- The HMS Management Division will evaluate requests from Atlantic Tunas Longline permit holders regarding their initial IBQ shares and NMFS' determination regarding a vessel's qualification to fish in the Cape Hatteras Gear Restricted Area. Any request must be postmarked no later than March 2, 2015, be in writing, and indicate the reason for the request, and contain documentation supporting the request (see the tables below for more detailed information). The HMS Management Division will evaluate the request and supporting documentation, and notify the appellant by a written Initial Administrative Determination regarding a decision to approve or deny the request. The Initial Administrative Determination will explain the basis for any denial decision.
- Within 90 days after the date of issuance of the determination, the permit holder may appeal the Initial Administrative Determination to the NMFS National Appeals Office.

Details Regarding the Appeals Process

HMS Process (Step 1): Must be completed by March 2, 2015.

1) You should prepare a letter that outlines the appeal and includes attached documentation in support of the appeal. Appeals may be submitted to:

Highly Migratory Species Management Division, NOAA Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910

2) The items subject to adjustment and appeals include the following:

IBQ Program

- Initial eligibility for quota shares
- Accuracy of NMFS HMS pelagic longline logbook records
 - Designated species landings
 - Bluefin interactions
- Correct assignment of target species landings and bluefin interactions to the vessel owner/permit holder.
- Historical changes in ownership or permit transfers.

Cape Hatteras GRA Access

- Accuracy of NMFS records:
 - Designated species landings
 - Bluefin interactions
 - Permit holder / vessel owner interactions with the Pelagic Observer Program (POP), POP information
 - HMS pelagic longline Logbook mailing records
- Correct assignment of target species landings and bluefin interactions to the vessel owner/permit holder.
- Historical changes in ownership or permit transfers.

- 3) The following documentation will be accepted in support of an appeal:
- Landings eligibility criteria require evidence of documented legal landings, i.e. official NMFS HMS PLL logbook records or weighout slips for landings from January 1, 2006, through December 31, 2012, that were submitted to NMFS prior to March 2, 2013 (60 days after the cutoff date for eligible landings).

NMFS will count only those designated species landings that were landed legally when the owner had a valid permit.

Appeals based on landings data or permit history will be based on NMFS HMS PLL logbook data, weighout slips, verifiable sales slips, receipts from permitted dealers, state landings records, and permit records.

Appeals based on bluefin interactions may be based on HMS PLL logbook records as described, observer data, or other NMFS data.

- No other proof of catch history will be considered.
- NMFS permit records will be the sole basis for determining permit transfers.

- 4) HMS Management Division staff will evaluate all requests and accompanying documentation, then notify the requestor by letter whether the appeal is approved or denied.

- 5) If the request is approved, then NMFS will issue the appropriate adjustment to the initial quota share and allocation and/or access determination. If denied, the permit holder may appeal the initial Agency determination within 90 days of receipt of the notice of denial by submitting a written petition of appeal to the NMFS National Appeals Office.

National Appeals Office Process (Step 2): Must be completed within 90 days of receipt of the initial agency determination.

Appeals will be governed by the regulations and policy of the National Appeals Office (NAO). NAO regulations can be found at 15 CFR part 906. The full NAO Rules of Procedure can be found in Appendix 11.9 of Final Amendment 7. A summary is provided below:

- 1) A potential appellant should submit a written petition of appeal to the NAO. Written petitions of appeal should be submitted by fax; if appellants do not have access to a fax machine they could submit a petition by mail.
- Fax: 301-713-2384
 - Mail: Chief, National Appeals Office, 1315 East-West Highway, Silver Spring, MD 20910
- 2) The Petition for Appeal should contain the following:
- A copy of the initial appeal submitted to the HMS Management Division.
 - Explanations of:
 - i. How the initial determination directly and adversely affects him/her.
 - ii. How the initial determination is inconsistent with law/regulations governing the initial determination.
 - Whether the appellant requests a hearing, or prefers that an appellant officer make a decision based on the NAO case record without a hearing.
 - Additional documentation in support of the appeal (any documentation submitted to the HMS Management Division or new documentation).
 - Whether the appellant has a representative, and contact information for said representative.

- An address of record whereby all communications regarding the appeal may be directed. The appellant **SHOULD ONLY** provide an address that will be monitored regularly by the appellant or the appellant's representative.

3) Appellants may request 1 extension to submit appeals and documentation.

4) After the appellate officer closes the evidentiary portion of the case record, NAO will issue a written decision based on the case record – decision is final for purposes of judicial review in **30 days**.

5) Parties may file a motion for reconsideration of an NAO decision within **10 days** of the issuance of the decision.

6) If the appeal is granted, NMFS would have 30 days to implement the decision following the final decision submitted by the NAO.

Questions regarding the appeals process? Please contact the relevant office:

HMS Management Division – 301-427-8503 (HQ) or 978-281-9260 (Gloucester, MA office)

NMFS National Appeals Office – 301-427-8774 or by email (NMFS.NAO.contact@noaa.gov)