

In his appeal, Appellant confirms the accuracy of the Official Record: "In 2008 five of my halibut charter clients cancelled their trips with my company and thus I had below the requisite 15 charters required for receipt of a transferable permit."³ In his appeal paperwork, Appellant attached a statement and an affidavit from individuals. In the statement and affidavit, the individuals state that Appellant had charter halibut trips scheduled but they were cancelled by the clients.

I have reviewed Appellant's appeal and the case record and I have determined that the record contains sufficient information on which to reach final judgment. There is no disputed material issue of fact, and no need for a hearing for testimony on disputed factual issues. I therefore am exercising my discretion to not hold a hearing and issue a decision based on the case record. Accordingly, I close the record and issue this decision. See 50 C.F.R. § 679.43(g) and (k).

ISSUES

The dispute in this case is whether Appellant is eligible for a transferable CHP. To resolve the dispute, I must determine whether Appellant timely reported to ADF&G fifteen or more halibut logbook fishing trips for 2008. If the answer to that question is "no," then I must uphold the IAD.

FINDINGS OF FACT

1. On March 17, 2010, Appellant applied for CHP.⁴
2. In his CHP application, Appellant requested a transferable permit.⁵
3. Appellant timely reported twenty-three bottomfish logbook trips to ADF&G for 2005.⁶
4. Appellant timely reported fourteen halibut logbook fishing trips to ADF&G for 2008.⁷

³ Case File, Pleadings Tab, Appellant's Affidavit dated November 5, 2010, Page 1, ¶ 3. In his CHP application, Appellant also indicated he took fourteen qualifying trips in 2008. Case File, Pleadings Tab, Application dated March 15, 2010, 3rd Page. See also Case File, Pleadings Tab, Print Summary created January 26, 2010.

⁴ Case File, Pleadings Tab, Application dated March 15, 2010.

⁵ Pleadings Tab, Application dated March 15, 2010, 2nd Page.

⁶ Original File Tab, IAD dated September 8, 2010, Page 3; Case File, Pleadings Tab, Print Summary created January 26, 2010.

5. On May 5, 2010, RAM sent Appellant a “Notice of Opportunity to Submit Evidence (Revised).” In the notice, RAM advised Appellant that the Official Record showed his vessel took sufficient trips for 2004 and 2005 for a transferable permit but not the requisite fifteen or more halibut logbook fishing trips for 2008. RAM also provided Appellant with the opportunity to prove that in point of fact he did report the requisite trips for 2008.⁸
6. On May 25, 2010, Appellant declined to submit additional evidence to RAM in support of his request for a transferable permit.⁹
7. On September 8, 2010, RAM issued the IAD at issue in this appeal.¹⁰ In the IAD RAM granted Appellant a nontransferable CHP endorsed for six anglers. RAM denied Appellant a transferable CHP because he lacked fifteen or more reported halibut logbook fishing trips in 2008.
8. On November 9, 2010, Appellant filed an appeal with OAA.¹¹
9. On November 29, 2011, NAO advised Appellant that it had received his appeal. NAO also asked Appellant to submit any additional materials about the facts and law in his appeal by December 20, 2010.¹² In response to that letter, Appellant did not submit additional materials.
10. On April 5, 2011, I was assigned this appeal for adjudication.¹³

PRINCIPLES OF LAW

The Official Record is the information NMFS prepared regarding participation in charter halibut fishing in Area 2C and Area 3A, which NMFS will use to implement the CHLAP and evaluate applications for charter halibut permits. 50 C.F.R. § 300.67(f)(5).

⁷ Case File, Pleadings Tab, Application dated March 15, 2010, 3rd Page; Case File, Pleadings Tab, Print Summary created January 26, 2010; Case File, Original File Tab, IAD, 2nd Page; Case File, Pleadings Tab, Appellant’s Affidavit dated November 5, 2010, Page 1, ¶ 3.

⁸ Case File, Pleadings Tab, RAM’s Notice of Opportunity to Submit Evidence (Revised) dated May 5, 2010, 2nd Page.

⁹ Case File, Pleadings Tab, Charter Halibut Permit Application Instructions for Processing Response 30 Day Notice of Opportunity to Submit Evidence, signed May 25, 2010.

¹⁰ Case File, Pleadings Tab, Appellant’s appeal submission received November 9, 2010; Original File Tab, IAD dated September 8, 2010.

¹¹ Case File, Pleadings Tab, Appellant’s appeal submission received November 9, 2010.

¹² Case File, Appeals Correspondence Tab, NAO letter dated November 28, 2010.

¹³ Case File, Pleadings Tab, Order Granting Motion for Reassignment of Administrative Judge.

trips) for 2005. However, RAM also stated that Appellant lacked the fifteen qualifying trips (halibut logbook fishing trips) for 2008. Appellant agrees with RAM. As noted previously, on appeal, Appellant states that he did not have the requisite trips due to cancellations. Since Appellant does not meet the regulatory requirement of fifteen reported halibut logbook fishing trips for 2008, I must uphold RAM's determination that Appellant is eligible for a nontransferable permit for six anglers but not eligible for a transferable permit.

In reaching my decision, I have carefully reviewed Appellant's paperwork presented on appeal as well as the entire case record. I have thoughtfully considered Appellant's arguments. In particular, Appellant thinks he should receive a nontransferable permit because but for the cancellations, he would have made fifteen or more halibut charter trips in 2008 and then reported them as required by law. I further understand that Appellant thinks a nontransferable permit is not valuable to him and has concerns about the future of his business.

Appellant's claims are not based on provisions of the CHLAP regulations, but rather rest in equity. However, the CHLAP regulations do not have a provision that would allow me to extend equitable relief to Appellant. I am bound to follow the CHLAP regulations, and for the reasons stated above, under the regulations, Appellant does not qualify for a transferable permit.

CONCLUSIONS OF LAW

Pursuant to CHLAP regulations, Appellant qualifies to receive a nontransferable CHP with an angler endorsement of six.

Under the CHLAP regulations, Appellant does not qualify for a transferable permit.

ORDER

The IAD dated September 8, 2010 is affirmed.

This decision is effective thirty days from the date issued and will become the final agency action for purposes of judicial review, unless a motion for reconsideration is made pursuant to <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>, or the Regional Administrator elects to review this decision pursuant to 50 C.F.R. § 679.43(k) and (o).

[REDACTED]
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If the Regional Administrator does not review the decision, the decision becomes final in thirty days without the Regional Administrator's review. After the decision is final, it may be appealed to a federal court of competent jurisdiction.

[REDACTED]
Eileen G. Jones
Chief Administrative Judge

Date Issued: April 29, 2011