

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

In re Application of



Appellant

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Appeal No. 10-0021

DECISION

STATEMENT OF THE CASE

This appeal is before the National Appeals Office (NAO), a division within the National Marine Fisheries Service (NMFS), Office of Management and Budget. NAO is the successor to the Office of Administrative Appeals (OAA), Alaska Region, and is charged with processing appeals that were filed with OAA. The undersigned is the administrative judge assigned to review and decide this matter pursuant to the federal regulation that is published in the Code of Federal Regulations at 50 C.F.R. § 679.43.

On August 2, 2010, [REDACTED], doing business as (dba) [REDACTED] (collectively referred to herein as Appellant), timely filed an appeal with OAA, challenging a NMFS Restricted Access Management Program (RAM) Initial Administrative Determination (IAD) dated June 3, 2010.¹ In that determination, RAM notified Appellant that it denied Appellant's application for a Charter Halibut Permit (CHP) under the Charter Halibut Limited Access Program (CHLAP).²

Appellant applied for a CHP on March 31, 2010.³ RAM made a preliminary assessment that it seemed unlikely, based on the information in the Official Record, that Appellant would qualify for a permit. RAM notified Appellant of its preliminary assessment in a Notice of Opportunity to Submit Evidence (Notice) dated April 28, 2010.⁴ According to RAM, the Official Record showed Appellant recorded no qualifying halibut logbook fishing trips in 2008.⁵ Since Appellant would need at least five trips in 2004 or 2005 and in 2008, it did not appear that Appellant would qualify for a permit. However, RAM

¹ Pleadings Tab, Appellant's Appeal of the IAD dated August 2, 2010; Original File Tab, IAD dated June 3, 2010.

² The CHLAP regulations became effective in 2010 and will be codified at 50 C.F.R. § 300.67. At present, the regulations can be obtained by accessing the Electronic Code of Federal Regulations (e-CFR), a current and updated version, but not an official legal edition, of the CFR. Citations to the CHLAP are to the e-CFR unless otherwise noted.

³ Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A dated March 31, 2010 (received by RAM on April 5, 2010).

⁴ Original File Tab, Notice of Opportunity to Submit Evidence dated April 28, 2010.

⁵ Original File Tab, Notice of Opportunity to Submit Evidence dated April 28, 2010.

informed Appellant that he could submit evidence to show that the Official Record was incorrect. Appellant responded to the Notice by submitting additional documentation. These documents were received by RAM on May 7, 2010.⁶

On June 3, 2010, RAM sent Appellant the IAD at issue in this case. In its IAD, RAM notified Appellant that according to information in the Official Record, Appellant met the minimum participation requirements in the qualifying period (2004 or 2005), but he did not meet the minimum participation requirements for the recent participation period (2008). RAM explained that Appellant was not the individual or non-individual entity to which the State of Alaska Department of Fish and Game (ADF&G) issued the Business Owner License that authorized taking logbook fishing trips in 2008.⁷ RAM also acknowledged Appellant's unavoidable circumstance claim, but it explained that the claim needed to be determined by OAA, provided Appellant filed an appeal with OAA to pursue his claim.⁸ In the Principles of Law section and Analysis section of this Decision, I explain in more detail the meaning and significance of the unavoidable circumstance claim.

On August 2, 2010, OAA received Appellant's appeal of the IAD.⁹ In his appeal, Appellant argues his business ██████████ (Business) is the relevant non-individual entity to be evaluated under the regulations. Appellant argues that the fact that Appellant did not own the Business during the recent participation period is not relevant to his eligibility to receive a CHP because the Business, under different ownership, was in operation in 2008. Appellant also argues that an unavoidable circumstance occurred in 2008, namely his retained vessel, ██████████ (Vessel), became potentially unsafe due to unreliable motors and a hull that needed repair. Appellant also sought to increase the fuel efficiency of his motors. Appellant claims that this circumstance compromised his ability to operate his charter business for the 2008 charter fishing season. Appellant states he tried to have his motors repaired, but his efforts were unsuccessful.¹⁰

On August 20, 2010, OAA issued an order acknowledging Appellant's appeal and requesting that any additional documentation or information in support of his appeal be submitted to OAA.¹¹ On September 15, 2010, NAO conducted a scheduling conference.¹² After granting Appellant's attorney's (Representative) request for a continuance,¹³ Administrative Judge Mary Alice McKeen conducted an oral hearing on November 17, 2010 and a supplemental oral hearing on November 23, 2010.¹⁴ On

⁶ Original File Tab, Appellant's letter dated April 30, 2010 with attachments (received by RAM on May 7, 2010).

⁷ An ADF&G Business Owner License includes a business registration, a sport fish business owner license, a sport fish business license, and an ADF&G business license. 50 C.F.R. § 300.67(b)(3).

⁸ Original File Tab, IAD dated June 3, 2010.

⁹ Pleadings Tab, Appellant's Appeal of the IAD dated August 2, 2010.

¹⁰ Pleadings Tab, Appellant's Post-Hearing Submission of Argument and Evidence dated Jan. 6, 2011 (received by OAA on Jan. 6, 2011).

¹¹ Pleadings Tab, Initial Order dated August 20, 2010.

¹² Appeals Correspondence Tab, Email from Representative to Judge McKeen dated Sept. 15, 2010.

¹³ Appeals Correspondence Tab, Email from Judge McKeen to Representative dated Oct. 18, 2010.

¹⁴ Pleadings Tab, Order after Supplemental Hearing dated Dec. 9, 2010.

December 9, 2010, Judge McKeen explained that she had accepted Appellant's evidentiary submissions into the case record and that she would continue to accept argument and evidence that supported Appellant's claim under the unavoidable circumstance provisions until December 30, 2010.¹⁵ On December 23, 2010, Judge McKeen granted Appellant a one-week extension to submit additional evidence into the record.¹⁶ On January 6, 2011, Representative submitted a "Post-Hearing Submission of Argument and Evidence,"¹⁷ which has been accepted into the case record. On January 28, 2011, Judge McKeen informed Representative of her involvement in the early stages of drafting the regulations to implement CHLAP and offered Appellant the opportunity to request assignment of another administrative judge to Appellant's case. Subsequently, Appellant requested re-assignment of his appeal to another judge.¹⁸ NAO re-assigned Appellant's appeal to the undersigned.

I have reviewed Appellant's appeal and the entire case record, and I have determined that the record contains sufficient information on which to reach final judgment and that all procedural requirements have been met. Accordingly, I close the record and issue the decision on the merits of Appellant's appeal.¹⁹ This decision follows.

ISSUES

At issue in this appeal is whether Appellant is eligible to receive a CHP under the CHLAP regulations. To resolve this issue, I must answer the following:

1. Did Appellant establish by a preponderance of the evidence that he reported at least five halibut logbook fishing trips during 2008?
2. If the answer to Question 1 is "no," I will decide whether Appellant has established by a preponderance of the evidence that he meets the threshold requirements for an unavoidable circumstances claim.

If the answer to Question 2 is "no," Appellant is not eligible for a permit, and I must uphold the IAD.

¹⁵ Pleadings Tab, Order after Supplemental Hearing dated Dec. 9, 2010.

¹⁶ Pleadings Tab, Email from Judge McKeen to Representative dated Dec. 23, 2010.

¹⁷ Pleadings Tab, Appellant's Post-Hearing Submission of Argument and Evidence dated Jan. 6, 2011 (received by OAA on Jan. 6, 2011).

¹⁸ Appeals Correspondence Tab, Email from Representative to Judge McKeen dated Feb. 2, 2011.

¹⁹ See 50 C.F.R. § 679.43(g)(2), (k).

FINDINGS OF FACT

1. Appellant purchased the Business in October 2003.²⁰
2. In 2004 and 2005, Appellant held a State of Alaska business license for the Business.²¹
3. In 2004, Appellant reported 131 bottomfish logbook fishing trips for Area 3A.²²
4. In 2005, Appellant reported 132 bottomfish logbook fishing trips for Area 3A.²³
5. Appellant used Vessel in both 2004 and 2005. In 2004, Vessel completed sixty-nine bottomfish logbook fishing trips. In 2005, Vessel completed fifty-three bottomfish logbook fishing trips. Appellant also owned the vessels [REDACTED]²⁴
6. In 2007, Appellant began repairs on Vessel, seeking to increase the reliability and fuel efficiency of the motors and to repair the hull.²⁵
7. Appellant hired a captain with his own clientele to operate Vessel during the 2008 fishing season.²⁶ Captain held the necessary Coast Guard license to captain a charter vessel during 2008.²⁷
8. In February 2008, Appellant sold the Business to Buyer.²⁸ Appellant retained Vessel.²⁹
9. In March 2008, Buyer incorporated the Business as a limited liability corporation. Buyer applied for and received a State of Alaska business license for the

²⁰ Pleadings Tab, Appellant's Post-Hearing Submission of Argument and Evidence dated Jan. 6, 2011 (received by OAA on Jan. 6, 2011).

²¹ Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A dated March 31, 2010 (received by RAM on April 5, 2010).

²² Original File Tab, Summary of Official Record for Appellant.

²³ Original File Tab, Summary of Official Record for Appellant.

²⁴ Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A dated March 31, 2010 (received by RAM on April 5, 2010).

²⁵ Original File Tab, [REDACTED] Transaction Detail by Account: June 2007 through December 2008; Testimony of Appellant at Oral Hearing, November 17, 2010.

²⁶ Original File Tab, [REDACTED] Transaction Detail by Account: June 2007 through December 2008 (indicating payments to Captain); Testimony of Appellant at Oral Hearing, November 17, 2010.

²⁷ Pleadings Tab, United States Coast Guard License dated June 9, 2008.

²⁸ Original File Tab, Summary of Official Record for Appellant.

²⁹ Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A dated March 31, 2010 (received by RAM on April 5, 2010).

Business. The Business was listed as the owner of that license.³⁰ The Business reported sixty-eight halibut logbook fishing trips in 2008.³¹

10. In May 2008, Appellant ceased efforts to repair Vessel.³² Appellant's last payment for Vessel's repair was made on May 2, 2008.³³

11. In 2008, Appellant reported no halibut logbook fishing trips for Area 3A.³⁴ There is no indication that Appellant held a State of Alaska business license in 2008.

12. On March 31, 2010, Appellant purchased the Business from Buyer.³⁵

PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS is only authorized to issue a CHP to the individual or entity that applied for a CHP and to which ADF&G issued the ADF&G Business Owner License. This license authorized the logbook fishing trips that were used to meet the minimum participation requirements to qualify for a CHP.³⁶

Minimum participation requirements to qualify for a CHP are as follows: an applicant must have reported five or more bottomfish logbook fishing trips during one year of the qualifying period (2004 or 2005) and must have reported five or more halibut logbook fishing trips during the recent participation period (2008).³⁷

A "logbook fishing trip" means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.³⁸

A "bottomfish logbook fishing trip" means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following pieces of information: the statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.³⁹

³⁰ Pleadings Tab, Appellant's Post-Hearing Submission of Argument and Evidence dated Jan. 6, 2011 (received by OAA on Jan. 6, 2011); Case File, Original File Tab, Articles of Organization for [REDACTED] dated March 5, 2008.

Original File Tab, Summary of Official Record for [REDACTED]
³² Pleadings Tab, Appellant's Post-Hearing Submission of Argument and Evidence dated Jan. 6, 2011 (received by OAA on Jan. 6, 2011); Testimony of Appellant at Oral Hearing, November 17, 2010.

³³ Original File Tab, [REDACTED] Transaction Detail by Account: June 2007 through December 2008.

³⁴ Original File Tab, Summary of Official Record for Appellant.

³⁵ Original File Tab, Agreement to Purchase Business dated March 31, 2010.

³⁶ 50 C.F.R. § 300.67(b)(1)(ii).

³⁷ 50 C.F.R. § 300.67(b)(1)(ii) (A)-(B); 50 C.F.R. § 300.67(f)(6)-(7).

³⁸ 50 C.F.R. § 300.67(f)(4).

³⁹ 50 C.F.R. § 300.67(f)(2).

A “halibut logbook fishing trip” means a logbook fishing trip in the recent participation period that was reported to the State of Alaska in a Saltwater Charter Logbook within the time limit for reporting the trip in effect at the time of the trip with one of the following pieces of information: the number of halibut that was kept, the number of halibut that was released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.⁴⁰

“Applicant selected year” means the year in the qualifying period (2004 or 2005) selected by the applicant for NMFS to use in determining the applicant’s number of transferable and nontransferable permits.⁴¹

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.⁴²

If an applicant does not qualify for a CHP based on the criteria outlined above, he may still be eligible for a permit if he meets the requirements of the unavoidable circumstance provisions of the CHLAP regulations. Under the unavoidable circumstance provisions as they apply to this case, an applicant for a CHP that meets the participation requirement for the qualifying period (2004 or 2005) but does not meet the participation requirement for the recent participation period (2008) may receive one or more CHPs if the applicant proves the following: the applicant had a specific intent to operate a charter halibut fishing business in the recent participation period; the applicant's specific intent was thwarted by a circumstance that was unavoidable, unique to the owner of the charter halibut fishing business, and unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business; the circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and the applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in at least one year of the qualifying period.⁴³

ANALYSIS

The first issue before me is whether Appellant established that he reported at least five halibut logbook fishing trips during 2008. The CHLAP’s general participation requirements mandate a minimal level of participation in charter halibut fishing business during two periods: the qualifying period, which occurred in either 2004 or 2005, and the recent participation period, which occurred in 2008. To establish that an applicant met those participation requirements, he must show that for 2004 or 2005 he timely reported at least five bottomfish logbook fishing trips and for 2008 he timely reported at least five halibut logbook fishing trips.

⁴⁰ 50 C.F.R. § 300.67(f)(3).

⁴¹ 50 C.F.R. § 300.67(f)(1).

⁴² 50 C.F.R. § 300.67(f)(5).

⁴³ 50 C.F.R. § 300.67(g)(1)(i)-(iv).

The record shows in 2004 and 2005, Appellant held an ADF&G business license and completed five or more bottomfish logbook trips. However, the record also shows in 2008 Appellant did not hold an ADF&G business license that authorized five or more halibut logbook fishing trips. Consequently, Appellant did not timely report at least five halibut logbook fishing trips in 2008 to qualify for a CHP. I have reviewed the record and conclude that although Appellant met the participation requirements during the qualifying period, he did not report at least five trips in the recent participation period of 2008 and therefore does not qualify for a CHP.

Since Appellant does not meet the minimum participation requirements of the recent participation period, I must now determine whether the unavoidable circumstance provision of the CHLAP regulations may provide a basis for Appellant to receive a CHP.⁴⁴ The relevant unavoidable circumstance provision has a number of requirements. Fifty C.F.R. § 300.67(g)(1)(i) requires the applicant to demonstrate that he had a specific intent to operate a charter halibut fishing business in the recent participation period (2008).

After carefully reviewing the case record, a preponderance of the evidence leads me to conclude that Appellant lacked the requisite specific intent contemplated by 50 C.F.R. § 300.67(g)(1)(i). Significantly, Appellant failed to demonstrate that he had a business license in 2008. Without completing the initial step of registering for a business license, Appellant would not be able to complete authorized logbook fishing trips as required by the regulations. Appellant explained that Vessel was not operated in 2008 due to unreliable motors, a hull that needed repair, and attempts to increase the fuel efficiency of the motors. Appellant did submit evidence of motor repair payments, but he did not explain how the charges specifically contributed to repair of Vessel. As well, the evidence shows Appellant's last payment for repairs of the Vessel was made on May 2, 2008, early in the charter halibut fishing season.

It is true that the evidence shows that Appellant retained Vessel after the sale of the Business. It is also true that Appellant had hired Captain to operate Vessel during the 2008 season. However, by his voluntary actions, Appellant did not apply for the necessary business license in 2008 and he ceased attempts to repair Vessel in May 2008. Consequently, under the totality of the circumstances, I conclude that Appellant lacked specific intent to operate a charter halibut fishing business in the recent participation period (2008). Since resolution of this issue is dispositive, I need not address the remaining elements of 50 C.F.R. § 300.67(g)(1).

In reaching my decision, I have reviewed the entire record, including Appellant's appeal. In his appeal, Appellant argues that he is the non-individual entity to which ADF&G issued the business license for 2008. However, the regulations explain that a CHP will only be awarded to the person who: first, applies for a permit and second, is the individual or non-individual entity to which ADF&G issued the license that authorized

⁴⁴ See 50 C.F.R. § 300.67(g)(1).

logbook fishing trips.⁴⁵ In 2008, Appellant did not own a business that was licensed by the State of Alaska. Also in 2008, Business's license was issued to Buyer,⁴⁶ and Buyer completed the authorized logbook fishing trips.

My analysis of Appellant's argument is further supported by the preamble to the Proposed Rule for the CHLAP regulations:

A person would be required to meet several basic standards to initially receive a charter halibut permit. These standards include, . . . *ownership* of a business that was licensed by the State of Alaska to conduct the guided sport fishing reported in the logbooks. . . .

[A] person would not meet this standard . . . if he or she held only a guide license or owned a charter vessel but did not hold an ADF&G business owner license during the qualifying *and recent participation years*.⁴⁷

While Appellant retained ownership of Vessel in 2008, the preamble specifically explains that this is insufficient to meet the requirements for receiving a CHP.⁴⁸ Instead, ownership of a business licensed during both the qualifying and the recent participation is required.

Appellant relies heavily on this sentence from the response to a comment regarding the final rule: "The initial allocation of permits is to businesses, and the criterion for a continuous business is not the continuity of the owners but the continuity of the business."⁴⁹ Appellant believes that this sentence shows he can use Business's 2008 logbook trips to qualify for a CHP. It does not. Again, the preamble provides specific guidance on this point.

Charter halibut permits would be awarded only. . . to applicants that participated as ADF&G licensed fishing guide business *owners* in a qualifying period and a recent participation period. . . . The [North Pacific Fishery Management] Council⁵⁰ did not intend a permit to be issued to an applicant to operate in this fishery unless the applicant met both criteria.⁵¹

⁴⁵ 50 C.F.R. § 300.67(b)(1)(i)-(ii).

⁴⁶ The license lists the holder as Business, LLC. Buyer obtained the license.

⁴⁷ 74 Fed. Reg. 18184-85 (April 21, 2009) (emphasis added).

⁴⁸ Buyer licensed the Business with ADF&G in 2008. Appellant is not included as an owner on the license.

⁴⁹ 75 Fed. Reg. 578 (Jan. 5, 2010).

⁵⁰ The Council is authorized to develop regulations under the Halibut Act § 733c(c).

⁵¹ 74 Fed. Reg. 18182 (April 21, 2009) (emphasis added).

In the same response cited by Appellant, NMFS specifically rejected the possibility that one business could use the logbook history of another business. NMFS uses an example to illustrate this point:

[C]harter business “A” may have the necessary logbook trips for the qualifying period but not the recent participation period and charter business “B” may have the necessary logbook trips for the recent participation period but not the qualifying period. Charter business “A” agrees to sell its logbook history to charter business “B.” NMFS will not recognize this agreement. In this case, neither business will qualify for a charter halibut permit.⁵²

Appellant, as owner of Business in 2004 and 2005, had the necessary logbook trips for the qualifying period. However, Appellant did not own a business or hold a business owner license during the recent participation period. Just as Buyer cannot claim Appellant’s logbook history for 2004 and 2005 to receive a permit, Appellant cannot claim Business’s 2008 logbook history as it was owned, operated, and reorganized as a limited liability corporation by Buyer during this time.

Appellant also argues on appeal that NMFS, through RAM, has improperly delegated authority to ADF&G to assist in its implementation of the CHLAP regulations. Under the regulations, NMFS must create the Official Record.⁵³ NMFS’s coordination with ADF&G was contemplated as a necessary part of developing the Official Record during the drafting of the regulations. Again, the preamble to the Proposed Rule and to the Final Rule of the CHLAP explains why NMFS chose to rely on state data:

The official record would be based on data from ADF&G because the State of Alaska has regulated charter fishing in the past and has the data on past participation in the charter halibut fishery. . . . Thus, the official record would include information from ADF&G on the persons that obtained ADF&G Business Owner Licenses in the qualifying period and the recent participation period. . . .⁵⁴

Appellant claims that ADF&G’s process improperly focuses on continuity of ownership rather than continuity of business. As addressed above, this focus is reasonable under the regulations. Only persons who apply for a CHP and are issued the ADF&G business owner license that authorized logbook fishing trips during the required periods are eligible to receive a permit.⁵⁵

⁵² 75 Fed. Reg. 578 (January 5, 2010).

⁵³ See 50 C.F.R. § 300.67(h)(3).

⁵⁴ 74 Fed. Reg. 18186 (April 21, 2009).

⁵⁵ 50 C.F.R. § 300.67(b)(1)(i)-(ii).

Appellant argues that ADF&G's process is not a reasonable, necessary, or appropriate interpretation of the CHLAP regulation. Appellant may believe that another process should be used or other data should be considered in determining CHP eligibility. Further, Appellant may dislike NFMS's policy concerning CHPs, including the way that policy has been implemented through coordination with ADF&G. However, Appellant has not shown that NMFS's interpretation of the CHLAP regulations is unreasonable or NMFS's use of state data was unreasonable or inconsistent with the CHLAP regulations. NMFS appropriately relies on ADF&G's data as anticipated by the Council because of ADF&G's history of regulating the charter fishing industry and its responsibility to issue the licenses upon which logbooks are authorized.⁵⁶

Appellant claims ADF&G's process arbitrarily and unfairly discriminates against, and denies equal protection to, unincorporated entities. Appellant suggests that to avoid discriminating against unincorporated entities, the continuity of business operations should be the primary concern when issuing CHPs rather than continuity of ownership. Appellant recommends that ADF&G consider the business's physical address, website, and phone number to determine whether an entity is eligible for a CHP. However, CHLAP's regulatory text specifically requires a CHP applicant to be the entity that was *issued* the business owner license that authorized the logbook fishing trips in 2004 or 2005 and in 2008.⁵⁷ The regulations do not allow permits to be given to entities on the basis of continuity of addresses, websites, and phone numbers in 2004 or 2005 and in 2008. Again, Appellant may not like NMFS's policies, but Appellant has not shown how NMFS's policies are inconsistent with CHLAP regulations.

Finally, Appellant alleges that RAM's eligibility determinations for CHPs have been inconsistent. I have reviewed the significant amount of data Appellant submitted with his appeal. However, the scope of this appeal does not extend to establishing error in another applicant's case. Rather, the issue on appeal is whether the regulations were correctly applied to Appellant. Appellant has not established that the IAD issued to him was inconsistent with CHLAP regulations. Based on my review, I uphold the IAD because Appellant was clearly not the owner of the ADF&G business license during the recent participation year as required to be eligible for a CHP.

⁵⁶ See 50 C.F.R. § 300.67(b)(1)(ii).

⁵⁷ See 50 C.F.R. § 300.67(b)(1)(i)-(ii). To support his claim, Appellant stated that Business "was the non-individual entity that held the ADF&G Business Owner Licenses in both the qualifying and recent participation periods" and yet was not eligible for a CHP. In fact, in 2004 and 2005, Appellant was listed as the holder of the business owner license; in 2008, Business (in its LLC form) was named as the holder of the business owner license. ADF&G properly recognized that Business was owned by different entities during the qualifying period and the recent participation period.

CONCLUSIONS OF LAW

Appellant did not meet the minimum participation requirements to qualify for a CHP pursuant to 50 C.F.R. § 300.67(b)(1)(ii) since Appellant did not meet the minimum participation requirement for the recent participation period of 2008.

Appellant did not prove he held a specific intent to operate a charter halibut fishing business in 2008, and therefore, he cannot prevail under a claim of unavoidable circumstances pursuant to 50 C.F.R. § 300.67(g)(1).

ORDER

The IAD dated June 3, 2010 is upheld. This decision takes effect thirty (30) days from the date issued, September 6, 2011, 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), (o).

Appellant or RAM may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m. Alaska Standard Time, on the tenth day after the date of this Decision, August 15, 2011. A Motion for Reconsideration must be in writing, must allege one or more specific material matters of fact or law that were overlooked or misunderstood by the administrative judge, and must be accompanied by a written statement of points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the Decision pending a ruling on the motion or the issuance of a Decision on Reconsideration.


Eileen G. Jones
Chief Administrative Judge

Date Issued: August 5, 2011