

In the Decision, I made two FOFs (numbers 7 and 8) with which Appellant disagrees.

The FOFs are:

7. BJF was a corporation in 2004. BJF has not been dissolved.
8. EAE is not the successor in interest to BJF.

As indicated in the Decision,⁴ FOF 7 was based on the following evidence of record:

- a. Appellant's letter dated October 8, 2010;
- b. Universal Telescopic, Application for an Open Account, attached to Appellant's October 8, 2010 letter;
- c. Attachment to Appellant's October 8, 2010 letter listing eleven documents;
- d. Commercial Marine Insurance Policy Declarations Page effective 3/25/2010 to 3/25/2011 listing "████████████████████" as a loss payee for Vessel 2, attached to Appellant's October 8, 2011 letter.

As indicated in the Decision,⁵ FOF 8 was based on the following evidence of record:

- a. Appellant's letter dated October 8, 2010;
- b. ██████████ Application for an Open Account, attached to Appellant's October 8, 2010 letter;
- c. Attachment to Appellant's October 8, 2010 letter listing eleven documents;
- d. Commercial Marine Insurance Policy Declarations Page effective 3/25/2010 to 3/25/2011 listing "████████████████████" as a loss payee for Vessel 2, attached to Appellant's October 8, 2011 letter.
- e. Application for Charter Halibut Permit(s) For IPHC Regulatory Areas 2C and 3A, 1st Page.

For both FOF 7 and 8, the first four (a-d) pieces of evidence overlap. The first (a) is Appellant's letter dated October 8, 2010. In that letter, Appellant states: "Logbooks in 2004 and prior were issued to ██████████ the corporation.. ██████████ ██████████ was a family run business."

⁴ Decision dated May 17, 2011, fn 25.

⁵ Decision dated May 17, 2011, fn 26.

The second (b) document is ██████████ Application for an Open Account, attached to Appellant's October 8, 2010 letter. On the application, the "firm name" is ██████████ (FSC). The "type of business" is identified as a corporation whose name is "██████████" whose president is ██████████ and whose operator is Appellant.

On the third (c) piece of evidence, attachment to Appellant's October 8, 2010 letter listing eleven documents, ██████████ and BJFL are identified as one and the same: "██████████." In the letter Appellant also notes that logbook 41641 was issued under the name "██████████." Similarly, in the fourth (d) document identified above, Commercial Marine Insurance Policy Declarations Page effective 3/25/2010 to 3/25/2011, lists "Buzz Johnson Fisheries Ltd" as a loss payee for Vessel 2. Finally, on the fifth (e) document listed above, Application for Charter Halibut Permit(s) For IPHC Regulatory Areas 2C and 3A, Appellant did not list or identify BJF or BJFL. On the application, Appellant checked "no," when asked whether he was a "successor-in-interest...to a dissolved non-individual entity."

Given the totality of the evidence of record, FOFs 7 and 8 are based on substantial evidence. It is true that some of the cited records and other evidence of record also refer to just ██████████ That, however, does not change the fact that FOF 7 and 8 are based on substantial evidence. I also understand that counsel for Appellant has asserted that his client "has occasionally interchanged... ██████████ ██████████ -without an understanding of the distinction between two entities-one being a Washington corporation and the other being a father son Alaska partnership."⁶ That does not change the fact that, based on record in this appeal, substantial evidence of record supports FOF 7 and 8. I also note the lack of documentary evidence submitted by Appellant, other than his statements, showing the legal status of BJF and/or BJFL.

The Charter Halibut Limited Access Program (CHLAP) regulations are quite clear about who may use a logbook and how one uses a logbook to meet the participation requirements for a permit. To prove qualifying participation, one needed a logbook issued in one's name and then one had to properly report qualifying trips to the Alaska Department of Fish and Game (ADF&G). The CHLAP regulations provide that only logbook fishing trips "reported under [an] applicant's ADF&G Business Owner License[]" can be attributed to an applicant for the purposes of qualifying for a charter halibut permit.⁷ This was the basis for the Initial Administrative Determination (IAD) in which the agency denied Appellant's application for a permit with six anglers (Appellant was granted a permit for four anglers). Logbook 41641 was issued to BJF, not Appellant. Appellant did not show on appeal that the agency's analysis in the IAD was wrong. Nor has Appellant shown in his Motion for Reconsideration an error in a material issue of law or fact in the Decision.

⁶ Appellant's counsel's letter dated December 8, 2010, page 2 fn 3.

⁷ 50 C.F.R. § 300.67(h)(2). See also 50 C.F.R. § 300.67(b)(1)(ii).

[REDACTED]
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To summarize, FOFs 7 and 8 are based on substantial evidence. Appellant cannot be credited with logbook trips taken on behalf and recorded by another entity, BJB or BJFL. Appellant has not proven there is a material error of law or fact in the Decision.

The new effective date of the Decision is September 12, 2011 subject to the Regional Administrator's review.⁸

[REDACTED]
Eileen G. Jones
Chief Administrative Judge

Date Issued: August 12, 2011

⁸ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. §679.43(o).