

reviewed Appellant's appeal and request for a hearing. I have determined that the record contains sufficient information on which to reach final judgment and, accordingly, I close the record and issue this decision without ordering a hearing.⁴

ISSUES

At issue in this appeal is whether RAM correctly denied Appellant's application for a CHP. To resolve this issue, I must evaluate whether the CHLAP regulations, namely 50 C.F.R. §§ 300.67(b)(1)(i) and 300.67(h)(1), support the denial of an application that was not filed within the application period as specified in the Federal Register.

FINDINGS OF FACT

1. In March 2009, Appellant completed the licensing requirements necessary to operate a charter boat.⁵ Appellant did not have logbook fishing trips in 2004 or 2005, and in 2008.⁶
2. In January 2010, Appellant contacted the Alaska Department of Fish and Game (ADF&G) to apply for a CHP.⁷ An ADF&G employee informed Appellant that he would not qualify for a CHP and the employee did not provide Appellant information about obtaining a CHP application.⁸
3. The application deadline for submission of a CHP application was April 5, 2010. Applications were to be obtained via the Internet or by requesting a CHP application from NMFS.⁹
4. In May 2010, Appellant contacted the Alaska Regional Administrator's office of NMFS, after which Appellant completed a signed CHP application dated July 7,

⁴ 50 C.F.R. §§ 679.43(g)(2) and (k)

⁵ Case File, Original File Tab, Representative's letter stamp received by RAM on July 13, 2010, Page 3.

⁶ Case File, Original File Tab, Representative's letter stamp received by RAM on July 13, 2010, Page 1, Pleadings Tab, "To Whom It May Concern" letters dated November 29, 2010.

⁷ Case File, Original File Tab, Representative's letter stamp received by RAM on July 13, 2010, Page 1, Appellant's affidavit dated July 7, 2010.

⁸ Case File, Original File Tab, Representative's letter stamp received by RAM on July 13, 2010, Page 1, Appellant's affidavit dated July 7, 2010.

⁹ 50 C.F.R. §§ 300.67(b)(1)(i) and (h)(1) and (2); 75 Fed. Reg. 1595 (January 12, 2010).

2010. On July 13, 2010, RAM received Appellant's CHP application, which was accompanied by an undated letter by his Representative and additional documentation. The upper portion of the first page of the CHP application states: Applications must be received by April 5, 2010. Late applications will be denied.¹⁰

5. RAM issued its IAD on July 16, 2010. In that decision, RAM notified Appellant that it denied Appellant's application for a CHP under the CHLAP because the application was not timely filed.¹¹

PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS will issue a CHP if the applicant meets certain requirements. One such requirement is that a person applies for a CHP by submitting a CHP application within the application period (not less than 60 days) as specified in the Federal Register. 50 C.F.R. §§ 300.67(b)(1)(i) and 300.67(h)(1). The CHLAP regulations further state that NMFS will deny any application submitted after the last day of the application period. 50 C.F.R. § 300.67(h)(1).

In accordance with its regulations, on January 12, 2010, NMFS informed the public of the CHP application period through publication of a notice in the Federal Register (Notice). Notice specified an application period beginning on February 4, 2010, and ending on April 5, 2010. It also informed the public how to obtain a CHP application, namely, by accessing an internet website address from which an application could be obtained or by requesting an application from NMFS. Lastly, Notice stated that CHP applications submitted to NMFS after the deadline "will be considered untimely and will be denied." 75 Fed. Reg. 1595 (January 12, 2010).

ANALYSIS

The regulations governing the CHLAP require that CHP applications are to be submitted within the application period and that applications submitted after the application deadline are deemed untimely and will be denied. 50 C.F.R. § 300.67(h)(1); Fed. Reg. 1595 (January 12, 2010).

¹⁰ Case File, Original File Tab, Representative's letter stamp received by RAM on July 13, 2010, Pages 1 and 2, CHP Application, Pages 1 through 10.

¹¹ Case File, Original File Tab, IAD dated July 16, 2010, Pages 1 through 4.

In the instant case, Appellant does not dispute that he submitted his CHP application on July 13, 2010, months after the April 5, 2010 deadline. Appellant explains that he was not operating a charter business until March 2009, and that he was unaware of the publications and notices in the Federal Register pertaining to the CHLAP.¹² Appellant asserts that, after realizing the existence of the CHLAP, he contacted the ADF&G by telephone in January 2010 to apply for a CHP, but was informed by an ADF&G employee that he would be denied a permit since he did not have logbooks from 2004 or 2005, and 2008. Appellant states the ADF&G employee told him that he could not apply for a permit and Appellant contends that he was not aware of an alternative method of applying for a permit apart from requesting an application from ADF&G. Consequently, Appellant argues that NMFS should consider and process his late filed application.¹³

In spite of Appellant's contention that he was unaware of the CHLAP requirements, NMFS' publication of the CHLAP regulations and Notice in the Federal Register provided constructive notice to Appellant of the program requirements. Specifically, Appellant was on notice that he had to submit a CHP application to NMFS by April 5, 2010, or else NMFS would deny the application as untimely. Further, Appellant was on notice that he could obtain an application on his own through the Internet or by requesting an application from NMFS. Thus, irrespective of the ADF&G employee's comments about Appellant's qualifications for a permit or unwillingness to obtain an application for Appellant, Appellant could have obtained an application directly from the Internet or by requesting an application from NMFS. Appellant's failure to familiarize himself with the published CHLAP program requirements for the CHP permit and failure to pursue the correct avenues by which to obtain a permit application does not establish error on the part of the agency.

While the discouraging conversation Appellant had with the ADF&G employee was unfortunate, the fact remains that applications for a CHP were to be obtained via the Internet or by requesting an application from NMFS, not by contacting ADF&G. Appellant was not prevented from obtaining a CHP application from the Internet or from NMFS and from submitting an application by the deadline. Consequently, Appellant's arguments do not convince me that RAM erred in its July 16, 2010 IAD when it denied Appellant's application for a CHP permit. Rather, my review of the case record in this matter reveals that RAM correctly followed its regulations, namely those found at 50

¹² Case File, Original File Tab, Representative's letter stamp received by RAM on July 13, 2010, Pages 2 and 3, Pleadings Tab, Representative's Letter dated September 8, 2010, Page 2.

¹³ Case File, Original File Tab, Representative's letter stamp received by RAM on July 13, 2010, Pages 1-2, and Appellant's affidavit dated July 7, 2010, Pleadings Tab, Representative's Letter dated September 8, 2010, Page 1.

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C.F.R. §§300.67(b)(1)(i) and 300.67(h)(1), and properly denied Appellant's application for a CHP.

CONCLUSIONS OF LAW

RAM correctly followed its regulations governing the CHLAP, namely those found at 50 C.F.R. §§ 300.67(b)(1)(i) and 300.67(h)(1), when it denied Appellant's application for a CHP.

ORDER

The IAD dated July 16, 2010 is AFFIRMED. This decision is effective thirty (30) days from the date issued and will become the final agency action for purposes of judicial review, unless a motion for reconsideration is made or the Regional Administrator elects to review this decision. See <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(k) and (o).

[REDACTED]
Christine D. Coughlin
Administrative Judge

Date Issued: February 10, 2011