

For the purposes of 50 C.F.R. § 300.67, the term “ADF&G Business Owner(s) License(s)” includes a “business registration,” “sport fish business owner license,” “sport fish business license,” and “ADF&G business license.”¹⁵

One logbook fishing trip made pursuant to one ADF&G Business Owner License shall not be credited to more than one applicant, except as provided in 50 C.F.R. § 300.67(b)(1)(iv), relating to successor-in-interest provisions.¹⁶

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.¹⁷

ANALYSIS

The first issue I must resolve in this case is whether Appellant has established by a preponderance of the evidence that he satisfied the minimum requirements to qualify for a CHP. Under the CHLAP regulations, NMFS will issue a CHP if the applicant meets certain requirements. One requirement is that the applicant is an individual, or non-individual entity, to which the ADF&G issued the ADF&G BOL that authorized logbook fishing trips that meet minimum participation requirements.¹⁸ 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, namely 2004 or 2005, and must have reported five or more halibut logbook fishing trips during the recent participation period, namely 2008.¹⁹ My review of the record reveals Appellant does not meet such minimum requirements.

While the evidence in this record, confirmed by the Official Record summary, confirms that Appellant met the participation requirements for the 2008 recent participation period, it also reveals that Appellant lacked sufficient participation in the qualifying period of 2004 or 2005 since he was not licensed to operate a charter halibut fishing business in those years. More specifically, Appellant lacked the ADF&G BOL that he needed to operate in 2004 to meet minimum eligibility requirements under the CHLAP.²⁰ That license, in turn, would have authorized Appellant to conduct logbook fishing trips in 2004, which if properly documented in an ADF&G Saltwater Charter Vessel Logbook for Vessel and reported to ADF&G would have enabled Appellant to receive credit for the trips in July, August, and September 2004 that he contends he should be credited. Without such a license, Appellant has not met minimum eligibility requirements to qualify for a CHP.

¹⁵ 50 C.F.R. § 300.67(b)(3).

¹⁶ 50 C.F.R. § 300.67(b)(2)(ii).

¹⁷ 50 C.F.R. § 300.67(f)(5).

¹⁸ 50 C.F.R. § 300.67(b)(1)(ii).

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

²⁰ Case File, Original File Tab, IAD dated October, 28, 2010, Official Record summary, Pleadings Tab, Appellant’s appeal submission.

Appellant concedes that he does not meet minimum eligibility requirements for a CHP. Appellant states the charter fishing business he originally founded is in Operator's name and that he "assumed the fishing business license and logbook in [Operator's] name would cover both of our interests."²¹ Unfortunately, the CHLAP regulations do not permit such an arrangement. As RAM stated in the IAD, support for which is found in 50 C.F.R. § 300.67(b)(2), except in the case of a successor-in-interest to a dissolved entity, "the regulations do not authorize RAM to credit logbook fishing trips to anyone other than the person to whom ADF&G issued the ADF&G [BOL] that authorized the logbook fishing trips."

I carefully considered Appellant's arguments on appeal and fully reviewed the case record in this matter. While I recognize the unfortunate economic circumstances Appellant faces, the regulatory requirements of the CHLAP must be met to be eligible to receive a CHP. In this case, those requirements have not been met. Accordingly, I find no error in RAM's decision to deny Appellant's application for a CHP.

CONCLUSIONS OF LAW

RAM correctly followed its regulations governing the CHLAP when it denied Appellant's application for a CHP after determining that Appellant did not meet the minimum eligibility requirements for a CHP. Specifically, Appellant is not the person to which the ADF&G issued the ADF&G BOL that authorized logbook fishing trips that meet minimum participation requirements in 2004.

ORDER

The IAD dated October 28, 2010 is Upheld. This decision takes effect (30) days from the date issued, August 19, 2011²², 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).

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 Time, on the tenth day after the date of this Decision, August 1, 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 in support of the motion.

²¹ Case File, Pleadings Tab, Appellant's appeal submissions.

²² 50 C.F.R. § 679.43(k) and (o).

[REDACTED]
Appeal No. 10-0122

[REDACTED]

Christine D. Coughlin
Administrative Judge

Date Issued: July 20, 2011