

After reviewing Appellant's application, on June 30, 2010, RAM sent Appellant a Notice of Opportunity to Submit Evidence (Notice).⁶ The Notice provided Appellant thirty days to provide additional information in support of his application due to Appellant not providing documentation which established that he had been issued a business license in 2008. Since the CHLAP regulations required an applicant to have a business license for 2004 or 2005 and 2008, without such information it appeared that Appellant would not qualify for a permit.

On July 16, 2010, Appellant submitted his response.⁷ In the response, Appellant submitted a statement explaining that in 2007 he sold his business to a Buyer who later changed the business name from Business I to Business II LLC. Appellant explained he had remained active in the business after its sale by participating as a guide. The Appellant believed that since the trips he made as a guide in 2008 were done with the same boat now owned by a different company, the trips logged should be used to qualify Appellant for a CHP.⁸

On November 29, 2010, RAM issued the IAD at issue in this appeal.⁹ In the IAD, RAM denied Appellant's application for a CHP. RAM first acknowledged that Appellant did have sufficient logbook trips for 2004 and 2005. However, RAM reasoned that the Official Record, which RAM uses to determine an applicant's eligibility, showed Appellant had not obtained an ADF&G Business Owner License under his name or under any business name in 2008. Therefore, Appellant did not have any logbook fishing trips for 2008. Further, under the applicable regulations RAM was not at liberty to credit logbook fishing trips to anyone other than to persons to whom ADF&G Business Owner Licenses were issued.

On January 31, 2011, Appellant filed a timely appeal.¹⁰ In response, on April 21, 2011, NAO mailed Appellant a letter indicating that his appeal had been received and that he could submit additional documentation in support of his appeal.¹¹ NAO did not receive any additional documentation from Appellant.

Upon review of Appellant's appeal and case record, I have determined that the record contains sufficient information on which to reach a 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.¹²

⁶ Original File, Notice.

⁷ Original File, Appellant's response dated July 12, 2010.

⁸ Original File, Appellant's handwritten letter submitted to RAM dated July 12, 2010.

⁹ Original File Tab, IAD.

¹⁰ Pleadings Tab, Appellant's letter submitted to OAA received January 31, 2011.

¹¹ Appeals Correspondence Tab, NAO letter dated April 21, 2011.

¹² See 50 C.F.R. § 679.43 (g) and (k).

ISSUES

At issue in this appeal is whether Appellant is eligible to receive a CHP.

To resolve this issue, I must evaluate the following: Did Appellant establish by a preponderance of the evidence that he was issued an ADF&G Business Owner License for 2008 as set forth in 50 C.F.R. § 300.67(b)(1)(ii)?

If the answer to that question is “no,” I must uphold the IAD and conclude that Appellant is not eligible for a CHP.

FINDINGS OF FACT

1. In 1988, Appellant started Business I.
2. Appellant has maintained his guide license since 1989 until present.¹³
3. In 1998, Appellant purchased a vessel (Vessel) intended for charter fishing.¹⁴
4. In 2004, Appellant timely reported thirteen logbook fishing trips to ADF&G.¹⁵
5. In 2005, Appellant timely reported eleven logbook fishing trips to ADF&G.¹⁶
6. In 2007, Appellant sold Business I and Vessel to Buyer.¹⁷
7. After the sale of Business I and Vessel, Buyer started Business II.¹⁸
8. In 2008, Appellant did not own Business I or Business II.¹⁹
9. In 2008, Buyer obtained an ADF&G Business Owner License for Business II.²⁰
10. In 2008, Appellant worked for Business II as a guide.²¹
11. For 2008, ADF&G did not issue a Business Owner License to Appellant or to a business he owned. For the 2008 fishing season, ADF&G did not issue a logbook to Appellant. For 2008, Appellant did not timely report at least five halibut logbook fishing trips to ADF&G.²²

¹³ Original File, Appellant’s letter dated July 12, 2010.

¹⁴ Pleadings Tab, Appellant’s letter received on January 31, 2011

¹⁵ Original File, Print Summary, created January 26, 2010.

¹⁶ Original File, Print Summary, created January 26, 2010.

¹⁷ Pleadings Tab, Appellant’s letter received on January 31, 2011.

¹⁸ Pleadings Tab, Appellant’s letter received on January 31, 2011.

¹⁹ I base this finding on the fact that Appellant sold Business I in 2007 and there is no evidence in the record that he owned Business I or Business II in 2008.

²⁰ Pleadings Tab, Appellant’s letter on January 31, 2011.

²¹ Pleadings Tab, Appellant’s letter received on January 31, 2011.

²² I base this finding on the absence of reported logbook trips in the Official Record for Appellant for 2008. Also, Appellant has had not produced a 2008 business license to RAM or during the appeal process.

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 the applicant is an individual, or entity, to which ADF&G issued an ADF&G Business Owner License(s) that authorized logbook fishing trips that meet minimum participation requirements.²³

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 2008.²⁴

A “logbook fishing trip” means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to ADF&G in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.²⁵

A “halibut logbook fishing trip” means a logbook fishing trip in the recent participation period (2008) that was reported to ADF&G 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.²⁶

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.²⁷

ANALYSIS

The broad issue I must decide is whether Appellant is eligible for a permit. Stated another way, I must decide whether the IAD is consistent with CHLAP regulations. To make that decision, I must decide whether Appellant meets one of the threshold requirements for eligibility, namely that he was issued an ADF&G Business Owner License for 2008 as set forth in 50 C.F.R. § 300.67(b)(1)(ii). In analyzing those issues, I have considered the entire record, including the documents submitted by Appellant in support of his appeal.

²³ 50 C.F.R. § 300.67(b)(1)(ii).

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

²⁵ 50 C.F.R. § 300.67(f)(4).

²⁶ See 50 C.F.R. § 300.67(f)(3).

²⁷ 50 C.F.R. § 300.67(f)(5).

Under 50 C.F.R. § 300.67(b)(1)(ii) to be eligible for a CHP, an applicant must be an individual or entity holding an ADF&G Business Owner License.²⁸ Upon receiving the license, an applicant is authorized to take logbook fishing trips. To prevail in this appeal, for 2008, Appellant had to have a business license, then take at least five qualifying trips in order to be eligible for a CHP.

Appellant concedes in his appeal he did not have a business license for the 2008 fishing year. Based on that admission as well as the evidence of record, I have found that Appellant did not hold the requisite license for the 2008 fishing season.²⁹ Without the requisite license, Appellant could not be issued a logbook and in fact he was not issued one; therefore, Appellant could not nor did he report at least five qualifying trips to ADF&G. Appellant is not eligible for a CHP. For the same reasons, the IAD is consistent with CHLAP regulations.

In deciding this case, I have considered Appellant's arguments raised in the appeal. Appellant appears to attribute his failure to receive a CHP to Buyer changing the name of the business after purchase. Appellant also believes that he should be credited with the logbook fishing trips made by Buyer in 2008. As indicated in the IAD, Appellant was denied a CHP due to his failure to obtain an ADF&G Business Owner License in 2008. The person to whom the logbook is issued is the person who receives credit for the reported trips.³⁰ Although Appellant has made it clear that he maintained his sports fishing guide license to date, such a license is not identified in the regulations as an equivalent substitution for a business license. With regard to Appellant's contention that he should be issued a permit due to his long career in the field, CHLAP regulations do not recognize that as a basis for eligibility; rather, as stated above, eligibility generally hinges on proof of participation in 2004 or 2005 and 2008.

CONCLUSIONS OF LAW

Appellant has not shown by a preponderance of the evidence that he was issued an ADF&G Business Owner License in 2008, a 2008 logbook, or that he properly reported at least five halibut logbook fishing trips to ADF&G for 2008.

The IAD is consistent with CHLAP regulations. Appellant is not eligible for a permit under CHLAP rules.

²⁹ Finding of Fact 11.

³⁰ See 50 C.F.R. § 300.67(b)(2)(ii).

ORDER

The IAD dated November 29, 2010 is Upheld. This decision takes effect thirty days from the date issued, August 22, 2011³¹ 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.

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██████████

Eileen G. Jones
Chief Administrative Judge

Date Issued: July 21, 2011

³¹ 50 C.F.R. § 679.43(k) and (o).