

Notice, RAM informed Appellant he had thirty days to provide additional information that could establish his eligibility for a CHP.

On August 2, 2010, Appellant submitted a letter in response to the Notice.⁶ Appellant explained in the letter that in 2008 he sold Vessel to ██████████ (Buyer) and subcontracted out his services to Buyer's business. Buyer requested and Appellant agreed that all charter fishing trips taken by Vessel would be logged in Buyer's logbook for 2008. That year, Appellant conducted forty-four charter fishing trips for Buyer, none of which were recorded in Appellant's logbook. It was Appellant's belief that because he heavily participated in managing the business which logged the trips and also subcontracted himself as well as others as guides and lodges in 2008, he should be issued a CHP.

On November 12, 2010, RAM issued the IAD at issue in this appeal.⁷ In the IAD, RAM denied Appellant's application for a CHP. RAM reasoned that the Official Record, which RAM uses to determine applicants eligibility, showed Appellant was not the individual or entity that the State of Alaska Department of Fish and Game (ADF&G) had issued an ADF&G Business Owner License which reported authorized logbook fishing trips for 2008.⁸ RAM explained that the logbook fishing trips on Vessel had been recorded in the logbook issued to Buyer's business for 2008.⁹

On January 3, 2011, Appellant timely appealed the IAD to OAA.¹⁰ With the appeal, Appellant renewed his claim that he did participate in the 2008 season and included a notarized statement from Buyer explaining the hardship both businesses would face if not awarded a CHP.¹¹

On March 3, 2011, NAO acknowledged receipt of Appellant's appeal and provided Appellant until April 4, 2011 to supplement the record.¹² NAO did not receive any additional information 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.¹³

⁶ Original File Tab, Appellant's type-written response to RAM's Notice.

⁷ Original File Tab, IAD.

⁸ Original File Tab, IAD page 2.

⁹ Original File Tab, IAD page 4.

¹⁰ Pleadings File Tab, Appellant's appeal letter received on January 3, 2011.

¹¹ Pleadings File Tab, Signed notarized statement from Buyer.

¹² Appeals Correspondence Tab, NAO letter dated March 3, 2011.

¹³ See 50 C.F.R. § 679.43 (g) and (k).

ISSUES

At issue in this appeal is whether Appellant is qualified to receive a CHP. To resolve this issue, I must evaluate the following:

Did Appellant establish by a preponderance of the evidence that he met the minimum participation requirement for the recent participation period by reporting to ADF&G five or more halibut logbook fishing trips he provided during 2008?

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

FINDINGS OF FACT

1. In 2004, 2005, and 2008, Appellant’s charter fishing business was issued a Business Owner License by ADF&G.¹⁴
2. In 2004, Appellant reported to ADF&G over fifteen bottomfish logbook fishing trips.¹⁵
3. In 2005, Appellant reporting to ADF&G over fifteen bottomfish logbook fishing trips.¹⁶
4. In 2007, Appellant moved from Alaska.¹⁷
5. In 2008, Appellant sold Vessel to Buyer.¹⁸
6. After the purchase, Appellant agreed to contract himself out to Buyer to help manage Vessel and act as a guide.¹⁹
7. Appellant and Buyer agreed that all trips would be recorded in Buyer’s logbook.²⁰
8. Appellant reported no halibut logbook fishing trips to ADF&G for his business in 2008.²¹

¹⁴ Original File Tab, Application page 3.

¹⁵ Original File Tab, Application page 3.

¹⁶ Original File Tab, Application page 3.

¹⁷ Original File Tab, Letter addressed to NMFS from Appellant received on August 2, 2010.

¹⁸ Pleadings File Tab, Appellant’s appeal letter received January 3, 2011.

¹⁹ Pleadings File Tab, Appellant’s appeal letter received January 3, 2011.

²⁰ Pleadings File Tab, Appellant’s appeal letter received January 3, 2011.

²¹ Pleadings File Tab, Appellant’s appeal letter received January 3, 2011.

PRINCIPLES OF LAW

In general, NMFS is only authorized to issue a CHP to an individual or entity that has been issued an ADF&G Business Owner License. These licenses can include business registration, sport fishing business owner license, sport fish business license, or ADF&G business license. With this license one is then authorized to take qualifying logbook fishing trips.²²

To establish one's history of bottomfish logbook fishing trips, one must record qualifying trips in a state-issued logbook. ADF&G issues logbooks to those who hold an ADF&G Business Owner License.²³

To be eligible for a permit, an applicant must have reported a minimum of five bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and must have reported five or more halibut logbook fishing trips during the recent participation period in 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 2008 recent participation period 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. NMFS used the Official Record to implement the CHLAP, including evaluating applications for CHPs.²⁷

²² See 50 C.F.R. § 300.67(b)(1)(ii) and (3).

²³ 50 C.F.R. § 300.67(b)(1)(ii)

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

²⁵ 50 C.F.R. § 300.67(f)(4).

²⁶ 50 C.F.R. § 300.67(f)(3).

²⁷ 50 C.F.R. § 300.67(f)(5).

ANALYSIS

The issue before me is whether Appellant has shown by a preponderance of the evidence that he reported to ADF&G a minimum of five halibut logbook fishing trips in 2008.²⁸ A “halibut logbook fishing trip” means a logbook fishing trip in the 2008 recent participation period 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.²⁹

In his appeal, Appellant concedes he did not report any halibut logbook fishing trips to ADF&G under his own business’s 2008 logbook, which the Official Record confirms. The person or entity who made the logbook trips in 2008 referenced by Appellant in his appeal, was Buyer. Buyer’s trips were taken and reported pursuant to Buyer’s Business Owner’s License and Buyer’s logbook; under the CHLAP regulations, Appellant cannot be credited with Buyer’s logbook trips.³⁰ Since the minimum participation requirement is five or more “halibut logbook fishing trips” in 2008, and Appellant reported none, RAM did not err in the IAD when it notified Appellant his application for a CHP was denied.

On appeal, Appellant argues that NMFS should credit the trips he guided for Buyer to his logbook. In support of that argument, Appellant submitted Buyer’s statement dated December 14, 2010. In that statement Buyer said he released “all rights or privileges” attached to his 2008 logbook and requested that his logbook be transferred to Appellant.³¹ However, since the trips Appellant references in his appeal were reported in a logbook issued to another ADF&G Business Owner License holder, the CHLAP regulations do not support issuance of a permit to Appellant.³²

In reaching my decision about this case, I have carefully reviewed the entire file, including Appellant’s appeal documentation. I have considered both Appellant’s and Buyer’s statements explaining the hardships that both businesses will experience if a permit is not awarded. However, I am bound to follow the CHLAP regulations, and as such, am not authorized to provide Appellant relief under those regulations and the facts of this case.

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

²⁹ 50 C.F.R. § 300.67(f)(3).

³⁰ See 50 C.F.R. § 300.67(b)(1)(ii), (2), and (3).

³¹ Pleadings File Tab, signed notarized statement from Buyer.

³² 50 C.F.R. § 300.67(b)(2)(i)-(iii).

CONCLUSIONS OF LAW

Pursuant to CHLAP regulations, Appellant has not shown that he properly reported the minimum of five halibut logbook fishing trips in 2008 to ADF&G.

Appellant cannot be credited with the 2008 logbook trips reported by Buyer.

As a result, the IAD is consistent with CHLAP regulations and Appellant is not eligible for a permit under CHLAP rules.

ORDER

The IAD dated November 12, 2010 is upheld. This decision takes effect thirty days from the date issued, August 29, 2011,³³ 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 8, 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 29, 2011

³³ 50 C.F.R. § 679.43(k) and (o).