



has owned, including Vessel 1 and vessels [REDACTED] (Vessels 2 and 3, respectively).<sup>4</sup>

RAM determined from the Official Record that Appellant was not issued an Alaska Department of Fish and Game (ADF&G) Business Owner's License (BOL) to operate in 2004 or 2005. Appellant had obtained an ADF&G BOL for 2006 through 2010. RAM determined that in the qualifying years of 2004 and 2005, the ADF&G BOL that authorized logbook fishing trips for Vessel 1 was IC Owner doing business as IC, who had also applied for a CHP. RAM concluded Appellant had not met the minimum participation requirements for the qualifying period of 2004 or 2005 and, accordingly, denied Appellant's CHP application.<sup>5</sup>

In his appeal, Appellant acknowledges that IC is owned by IC Owner. However, Appellant explains that he has had a working relationship with IC since its inception and that he "runs his boat through" IC's business office. Appellant argues that he has made every effort to comply with various agency requirements and that he "has always run legally, fully licensed, insured, quality charter fishing trips." Appellant argues that he is not seeking more than what has been earned and he asserts there is sufficient logbook documentation for Vessel 1 to meet the requirements of the qualifying and recent participation periods. Appellant contends that Appellant's purchase of his own business license in 2006 has negatively impacted the ability to obtain a transferable permit associated with Vessel 1. Appellant states the denial of a permit will effectively end his 28-year career in the halibut charter industry.<sup>6</sup>

I have reviewed Appellant's appeal request and the case record and I have determined that the record contains sufficient information on which to reach a final determination. Accordingly, I close the record and issue this decision without ordering a hearing. See 50 C.F.R. § 679.43(g)(2) and (k).

## 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 Appellant has established by a preponderance of the evidence that he met the qualifications for a CHP. Specifically, I must resolve whether Appellant is the individual or non-individual entity to which the ADF&G issued an ADF&G BOL that authorized logbook fishing trips, which could then be used to meet program participation requirements.

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<sup>4</sup> Case File, Original File Tab, undated statement by IC Owner, received by RAM on March 22, 2010, August 24, 2010 statement from Appellant, and August 26, 2010 statement from Appellant.

<sup>5</sup> Case File, Original File Tab, IAD dated September 17, 2010.

<sup>6</sup> Case File, Pleadings Tab, Appellant's appeal received by NAO on November 15, 2010.

## FINDINGS OF FACT

1. In 1990, Appellant registered with the [REDACTED] (KPB) to conduct business with Vessel 2. Vessel 2 was eventually sold and replaced by Vessel 3.<sup>7</sup>
2. In 1992, IC Owner purchased IC. For a fee, Appellant began utilizing IC's booking office to book charters and to handle the collection of monies and payment of sales taxes.<sup>8</sup>
3. In 2000, Appellant purchased and operated Vessel 1.<sup>9</sup>
4. In 2005, Appellant obtained a Guide License from the ADF&G.<sup>10</sup>
5. In 2006 through 2009, Appellant obtained a combined Business Owner/Guide license from the ADF&G.<sup>11</sup>
6. Appellant obtained licensing from the Alaska Department of Commerce, Community, and Economic Development, to conduct business from May 3, 2006 through December 31, 2010.<sup>12</sup>
7. On March 22, 2010, RAM received Appellant's completed *Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A*. In his application for a CHP, Appellant listed two charter halibut fishing businesses that he owned, one, IC, that he operated in 2004 and 2005, and another, Appellant, that he operated in 2008. In his application, Appellant also identified Vessel 1 as the vessel operated by the charter halibut fishing businesses he owned in 2004, 2005 and 2008.<sup>13</sup>
8. In a letter dated July 30, 2010, RAM notified Appellant that the Official Record did not reveal that Appellant met the minimum requirements to qualify for a CHP. Specifically, RAM notified Appellant that IC/IC Owner, not Appellant, was the person to whom ADF&G issued the ADF&G BOL that authorized 2004 or 2005 logbook fishing trip for Vessel 1. RAM explained that, while Appellant may have owned Vessel 1 and that his business met the participation requirements for 2008 with Vessel 1, vessel ownership is not part of the eligibility criteria for issuance of a CHP. RAM notified Appellant of the opportunity to submit

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<sup>7</sup> Case File, Original File Tab, undated statement by Appellant received by RAM on March 22, 2010, Pleadings Tab, Appellant's appeal received by NAO on November 15, 2010.

<sup>8</sup> Case File, Original File Tab, August 24, 2010 statement from Appellant, and August 26, 2010 statement from Appellant.

<sup>9</sup> Case File, Original File Tab, undated letter from Appellant received by RAM on March 22, 2010.

<sup>10</sup> Case File, Original File Tab, 2005 Sport Fish Business Owner/Guide License.

<sup>11</sup> Case File, Original File Tab, 2006 Sport Fish Business Owner/Guide License Application, 2007 Sport Fish Business Owner/Guide License, 2008 Sport Fish Business Owner/Guide License Application, 2009 Sport Fish Business Owner/Guide Renewal License Application.

<sup>12</sup> Case File, Original File Tab, Alaska Department of Commerce, Community, and Economic Development licenses for Appellant.

<sup>13</sup> Case File, Original Tab, CHP application received by RAM on March 22, 2010.

evidence. In response, Appellant submitted a letter of explanation and request for an IAD.<sup>14</sup>

9. In a letter dated September 17, 2010, RAM issued an IAD that denied Appellant's application for a CHP. RAM determined from the Official Record that Appellant was not issued an ADF&G BOL to operate in 2004 or 2005. Rather, for the qualifying years of 2004 and 2005, the ADF&G BOL that authorized logbook fishing trips for Vessel 1 was IC Owner doing business as IC, who had also applied for a CHP as the person issued the ADF&G BOL for vessels operated by IC. Thus, RAM concluded Appellant had not met the minimum requirements to qualify for a CHP.<sup>15</sup>

10. On November 15, 2010, NAO received Appellant's appeal to the IAD.<sup>16</sup>

### 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 non-individual entity, to which the ADF&G issued the ADF&G Business Owner Licenses that authorized logbook fishing trips that meet minimum participation requirements. 50 C.F.R. § 300.67(b)(1)(ii). 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. 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B); 50 C.F.R. § 300.67(f)(6) and (7).

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." 50 C.F.R. § 300.67(b)(3).

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. 50 C.F.R. § 300.67(b)(2)(ii).

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. 50 C.F.R. § 300.67(f)(5).

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<sup>14</sup> Case File, Original Tab, July 30, 2010 letter from RAM and August 24, 2010 response from Appellant.

<sup>15</sup> Case File, Original Tab, IAD dated September 17, 2010.

<sup>16</sup> Case File, Pleadings Tab, Appellant's appeal letter received by NAO on November 15, 2010.

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

The Official Record accurately reveals, and the record in this case confirms, that Appellant was not a person to which the ADF&G issued an ADF&G BOL license to authorize logbook fishing trips that meet the minimum participation requirements, namely those relating to the qualifying years of 2004 or 2005. In 2005, Appellant had a Guide license from the ADF&G, but not a BOL. It was not until 2006, and years thereafter, that Appellant obtained a BOL from the ADF&G. Further, it was not until 2006, and years thereafter, that Appellant obtained licensing from the Alaska Department of Commerce, Community, and Economic Development, to conduct business. While Appellant contends he has been recognized to conduct business by the KPB since 1990, such recognition does not satisfy the regulatory requirements of the CHLAP as outlined in 50 C.F.R. § 300.67(b).

Appellant has also made arguments concerning his ownership of Vessel 1, and other vessels. However, ownership of a vessel does not resolve Appellant's qualification for a CHP, which, as has been stated, requires issuance by the ADF&G of an ADF&G BOL authorizing logbook fishing trips that meet minimum participation requirements. The record in this case shows that, for 2004 and 2005, the person issued the ADF&G BOL that authorized logbook fishing trips for Vessel 1 was IC Owner doing business as IC, who had also applied for a CHP as the person issued the ADF&G BOL for vessels operated by IC. Notably, the CHLAP regulations state that a logbook fishing trip made pursuant to one ADF&G Business Owner License shall not be credited to more than one applicant, except in a successor-in-interest case which is inapplicable here. 50 C.F.R. § 300.67(b)(2)(ii).

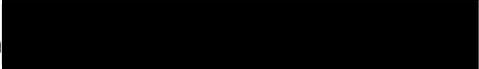
I have carefully considered Appellant's arguments on appeal and fully reviewed the case record in this matter. While I empathize with Appellant's frustrations and unfortunate circumstances, I am bound to follow the regulatory requirements of the CHLAP. Accordingly, I find no error in RAM's decision to 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 qualifications for a CHP.

## ORDER

The IAD dated September 17, 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.<sup>17</sup>



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Christine D. Coughlin  
Administrative Judge

Date Issued: March 15, 2011

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<sup>17</sup> <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(k) and (o).