

On September 15, 2010, RAM sent Appellant the Initial Administrative Determination (IAD) which is at issue in this case. In the IAD, RAM explained that it was issuing Appellant a Charter Halibut Permit (CHP). The CHP was non-transferable and allowed up to six anglers on board during charters.⁵

On October 13, 2010, Appellant filed an appeal of the IAD with OAA. In his appeal Appellant does not articulate a substantive basis for wanting a transferable permit. Rather, Appellant asked that the appeal be delayed until November 15, 2010 and indicated that he had additional evidence to support his claim that he could submit when he returned from red crab fishing.⁶

On November 19, 2010, I sent Appellant a letter in which I asked that if Appellant had additional evidence in support of this case that he supply it to NAO by December 10, 2010.⁷ Appellant did not respond.

I have determined that the information in the record is sufficient to render a decision within the meaning of 50 C.F.R. § 679.43(g)(2). I therefore close the record and render this decision.

ISSUES

The issue in this case is whether RAM erred in denying Appellant a transferable permit. To resolve that issue, I must decide whether Appellant met the minimal participation criteria for a transferable permit outlined in the CHP regulations. That is, did Appellant prove by a preponderance of the evidence that he reported fifteen or more bottomfish logbook fishing trips from the same vessel during one year of the qualifying period (2005). If the answer to that question is "yes," I must then decide whether Appellant proved by a preponderance of the evidence that he also reported fifteen or more halibut logbook fishing trips from the same vessel during the recent participation period (2008). If the answer to that question is "no," then I must sustain the IAD.

FINDINGS OF FACT

1. Appellant reported more than fifteen bottomfish logbook fishing trips for the same vessel in 2005.⁸

⁵ Agency File Tab, IAD, Page 1.

⁶ Pleadings Tab, Letter dated October 13, 2010, Page 1.

⁷ Correspondence Tab, Letter dated November 19, 2010, Page 1.

⁸ Agency File Tab, Notice of Opportunity to Submit Evidence dated May 20, 2010; Agency File Tab, IAD.

2. Appellant reported twelve halibut logbook fishing trips for the same vessel in 2008.⁹
3. After reporting twelve halibut logbook fishing trips for the same vessel in 2008, Appellant sold his boat.¹⁰

PRINCIPLES OF LAW

To qualify for a transferable permit an applicant must meet all regulatory criteria, including that which designates the minimal number of certain logbook trips that are reported to the Alaska Department of Fish and Game (ADF&G). The minimal number of certain logbook trips for a transferable permit is: one, fifteen or more bottomfish logbook fishing trips from the same vessel reported to ADF&G for the qualifying period (in this case 2005), and; two, fifteen or more halibut logbook fishing trips from the same vessel reported to ADF&G for the recent participation period (2008).¹¹ 50 C.F.R. § 300.67(d).¹²

A "bottomfish logbook fishing trip" is one timely reported to ADF&G in a Saltwater Charter Logbook and includes information about the statistical area where bottomfish fishing occurred, the boat hours the vessel was used for bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing. See 50 C.F.R. § 300.67(f)(2) and (4).

A "halibut logbook fishing trip" is one timely reported to ADF&G by the deadline in a Saltwater Charter Logbook and includes information about the number of halibut kept, the number of halibut released, the statistical area where bottomfish fishing occurred, or the boat hours that the vessel was used for bottomfish fishing. See 50 C.F.R. § 300.67(f)(3) and (4).

⁹ Agency File Tab, Appellant's letter dated March 22, 2010; Agency File Tab, Notice of Opportunity to Submit Evidence dated May 20, 2010; Agency File Tab, IAD.

¹⁰ Agency File Tab, Appellant's letter dated March 22, 2010.

¹¹ "Same vessel" does not require that the same vessel be used in both the qualifying and recent participation period but that the same vessel be used in a particular period (in this case the 2005 fishing year and the 2008 fishing year). 50 C.F.R. § 300.67(d)(1)(iii).

¹² The charter halibut limited access program (CHLAP) regulations govern CHPs. The regulations became effective in 2010 and will be codified at 50 C.F.R. § 300.67. At present, the regulations can be obtained by accessing the Electronic Code of Federal Regulations (e-CFR), a current and updated version, but not an official legal edition of the C.F.R. Citations to the CHLAP are to the e-CFR, unless otherwise noted.

ANALYSIS

By his own concession, Appellant did not meet the minimal participation criteria for a transferable permit.¹³ Minimal participation includes reporting to ADF&G fifteen or more halibut logbook fishing trips in 2008. However, Appellant states he took twelve halibut logbook fishing trips in 2008. That statement is confirmed by RAM's statements that Appellant did not have at least fifteen halibut logbook trips reported to ADF&G. Based on the evidence of record, there is only one conclusion I can reach – Appellant did not show he met the minimal participation requirements for a transferable permit and therefore the IAD is upheld.

In reaching my conclusion, I note that Appellant has had ample opportunity to submit evidence to establish his claim, both by RAM and NAO. Yet, again, the record does not support his claims.

CONCLUSIONS OF LAW

Pursuant to 50 C.F.R. § 300.67(d), Appellant reported more than fifteen bottomfish logbook fishing trips for the same vessel in 2005.

Pursuant to 50 C.F.R. § 300.67(d), Appellant reported twelve halibut logbook fishing trips for the same vessel in 2008.

Pursuant to 50 C.F.R. § 300.67(d), Appellant did not report the requisite minimal halibut logbook fishing trips for the same vessel in 2008.

Pursuant to 50 C.F.R. § 300.67(d), Appellant is not eligible for a transferable permit, and therefore the IAD is consistent with applicable regulations.

¹³ Agency File Tab, Appellant's letter dated March 22, 2010.

ORDER

The IAD dated September 15, 2010 is upheld. 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.¹⁴



Eileen G. Jones
Chief Administrative Judge

Date Issued: March 25, 2011

¹⁴ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm> ; 50 C.F.R. § 679.43(k) and (o).