



On August 24, 2010, Appellant responded to the Notice.<sup>4</sup> Appellant indicated he has 2008 logbooks in his possession for [REDACTED] [REDACTED] was dissolved, that he purchased boats from [REDACTED] the prior owner (Prior Owner) of [REDACTED] with the understanding that he would receive all halibut permits connected with that business and that he would be the successor-in-interest to that business, and that shortly after he purchased this business from Prior Owner and prior to being able to change the official record and complete all permit transfers, Prior Owner died. Appellant additionally claimed the above were unavoidable circumstances that prevented him from being eligible for a CHP.

On December 16, 2010, RAM sent Appellant the IAD at issue in this case.<sup>5</sup> In its IAD, RAM denied Appellant a permit because he lacked the requisite logbook trips as explained in the Notice. RAM stated Appellant did not qualify for a permit as a successor-in-interest. RAM noted Appellant had the right to appeal the IAD to OAA and that any appeal must be received by February 14, 2011.

On February 14, 2011, Appellant appealed the IAD.<sup>6</sup> Included in his appeal was Prior Owner's Last Will and Testament, a Bill of Sale, a General Power of Attorney form, and a Report of Death of an American Citizen Abroad.<sup>7</sup> On April 21, 2011, NAO sent Appellant a letter notifying him that the office had received his appeal and requesting that any additional documentation or information in support of his appeal be submitted to NAO by May 23, 2011.<sup>8</sup> NAO did not receive any additional material from Appellant supporting his claim.

I have reviewed Appellant's appeal and the case record, and I have determined that the record contains sufficient information on which to reach final judgment. Accordingly, I close the record and issue this decision without ordering a hearing.<sup>9</sup>

## ISSUES

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

- a. Did Appellant prove by a preponderance of the evidence that he timely and properly reported to ADF&G at least five bottomfish logbook fishing trips during one year of the qualifying period (2004 or 2005)?

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<sup>4</sup> Original File Tab, type-written letter, dated August 24, 2010, received August 24, 2010.

<sup>5</sup> Original File Tab, IAD dated December 16, 2010.

<sup>6</sup> Pleadings Tab, Appellant's letter of appeal, received February 14, 2011.

<sup>7</sup> Pleadings Tab, Prior Owner's Last Will and Testament, Bill of Sale, General Power of Attorney form, and Report of Death of an American Citizen Abroad.

<sup>8</sup> Appeals Correspondence Tab, Letter from NAO to Appellant dated April 21, 2011.

<sup>9</sup> 50 C.F.R. § 679.43 (g)(2), (k).



## PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS is only authorized to issue a CHP to the individual or entity to which ADF&G issued the ADF&G Business Owner License.<sup>16</sup> This license authorized the logbook fishing trips that are used to meet the minimum participation requirements to qualify for a CHP.<sup>17</sup>

The regulations governing the CHLAP provide that NMFS will issue a CHP if an applicant meets certain requirements. If an Appellant seeks a permit because he is a successor-in-interest to an entity that is not an individual, the applicant must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.<sup>18</sup>

A “logbook fishing trip” means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip. A “bottomfish logbook fishing trip” means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following pieces of information: the statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.<sup>19</sup>

A “halibut logbook fishing tip” means a logbook fishing trip in the recent participation period that was reported to the State of Alaska 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.<sup>20</sup>

Minimum participation requirements to qualify for a charter halibut permit 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.<sup>21</sup>

If an applicant for a CHP cannot meet the participation requirements in one period, but does meet the participation requirements for the other period, then the applicant may still be eligible for a CHP under the exception to the participation requirements known as the “unavoidable circumstances” rule.<sup>22</sup>

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<sup>16</sup> An ADF&G Business Owner License includes a business registration, a sport fish business owner license, a sport fish business license, and an ADF&G business license. 50 C.F.R. § 300.67(b)(3).

<sup>17</sup> 50 C.F.R. § 300.67(b)(1)(ii).

<sup>18</sup> 50 C.F.R. § 679.43 (b)(1)(iii)(B).

<sup>19</sup> 50 C.F.R. § 300.67(f)(2).

<sup>20</sup> 50 C.F.R. § 300.67(f)(3).

<sup>21</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A)-(B), (f)(6)-(7).

<sup>22</sup> See 50 C.F.R. § 300.67(g)(1)-(2).

## ANALYSIS

The first issue I must resolve in this appeal is whether Appellant meets the minimum participation requirements to be eligible for a CHP. Under CHLAP regulations, minimum participation requirements for a CHP are five or more bottomfish logbook fishing trips during one year of the qualifying period, namely 2004 or 2005, and five or more halibut logbook fishing trips during the recent participation period, namely 2008.<sup>23</sup>

Appellant properly reported two logbook fishing trips to ADF&G for 2008, and reported no qualifying trips to ADF&G for 2004 or 2005. Thus, Appellant does not meet minimum participation requirements for 2004 or 2005 and does not meet minimum participation requirements for 2008. Since the CHLAP regulations require minimum participation in both 2004 or 2005 and 2008, Appellant does not meet the minimum participation requirements for a CHP.

The next issue I must resolve in this appeal is whether Appellant can obtain a CHP as a successor-in-interest. Under the CHLAP regulations, a putative successor-in-interest to an entity that is not an individual must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

Appellant is applying as a successor-in-interest to [REDACTED], a Limited Liability Company. As this company is an entity that is not an individual, Appellant must establish this company was dissolved. The Alaska Division of Corporations Business and Professional Licensing lists this company's status is "Active". It is logical to conclude, therefore, that this company has not been dissolved.

Although Appellant states he purchased Prior Owner's business with the understanding he would receive all halibut permits connected with that business and that he would be the successor-in-interest to that business, he has not established he is a successor-in-interest under the CHLAP regulations.

On appeal, Appellant argues the events and circumstances in his case qualify him for CHP based on the unavoidable circumstance exception regulations, and that he met the minimum participation requirements for the recent participation period (2008) with the vessels he acquired from Prior Owner. In order to qualify for such an exception under the CHLAP regulations, Appellant must have met the minimum participation requirements for either the qualifying or recent participation period. Appellant has not established he was an individual or entity to which ADF&G issued an ADF&G Business Owner License authorizing logbook fishing trips meeting the minimum participation requirements for the qualifying period (2004 or 2005) or the recent participation period (2008). As Appellant has not achieved the minimum participation requirements for either period, he is not eligible for an unavoidable circumstance exception.

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<sup>23</sup> 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).

In reaching my decision, I have carefully reviewed the entire record. I recognize Appellant's interest in his business. However, I am bound to follow the CHLAP regulations, and as such, Appellant does not qualify for a permit.

### CONCLUSIONS OF LAW

Appellant is not eligible for a permit under the CHLAP rules as he did not prove by a preponderance of the evidence that he reported at least five bottomfish logbook fishing trips during either 2004 or 2005, and at least five halibut logbook fishing trips in 2008. Appellant has not established by a preponderance of the evidence that he met the requirements of 50 C.F.R. § 300.67(b)(1)(iii)(B). Appellant is not eligible for a CHP as a successor-in-interest to Prior Owner. Appellant does not qualify under the unavoidable circumstances provisions of the CHLAP regulations to receive a CHP. The IAD is consistent with CHLAP regulations.<sup>24</sup>

### ORDER

The IAD, dated December 16, 2010, is upheld. This decision takes effect thirty days from the date issued, December 19, 2011, 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 reverses, modifies, or remands this decision pursuant to 50 C.F.R. § 679.43 (k), (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 Standard Time on November 28, 2011, the tenth day after the date of this Decision. 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 of points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the Decision pending a ruling on the motion or the issuance of a Decision on Reconsideration.



Steven Goodman  
Administrative Judge

Date Issued: November 18, 2011

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<sup>24</sup> There are additional issues in Appellant's case that may have resulted in him being ineligible for a CHP. This decision is limited to the facts of this case.