



(Business) listing Decedent as the owner of Business, but signed by [REDACTED] (Partner).

On July 7, 2010, RAM sent Appellant a Notice of Opportunity to Submit Evidence (Notice). In the Notice, RAM informed Appellant that Decedent had not been listed by the State of Alaska Department of Commerce or the Charter Halibut Official Record as the owner of Business in 2004 or 2005. Instead, Decedent had been listed as the owner for [REDACTED] (LLC) in 2008 but had no logbook fishing trips reported for 2004 or 2005. RAM allowed Appellant thirty days to submit additional information that could establish Decedent's ownership of Business.<sup>5</sup> RAM received no additional documentation from Appellant.

On November 19, 2010, RAM issued the IAD at issue in this appeal.<sup>6</sup> In the IAD, RAM denied Appellant's application and reasoned that the Official Record, which RAM uses to determine an applicant's eligibility, indicated Decedent was not the individual or entity to which the State of Alaska Department of Fish and Game (ADF&G) issued the ADF&G Business Owner License that authorized the logbook fishing trips that met the minimum participation requirements for 2004 or 2005. RAM added that the logbook fishing trips reported to ADF&G for Business did not include any halibut fishing trips for 2008.

On January 18, 2011, Appellant timely appealed the IAD to OAA.<sup>7</sup> In the appeal, Appellant argues Decedent became a partner of Business in 2005, and that same year Partner filed for a Business Owner License on Decedent's behalf.<sup>8</sup> Appellant states Partner used Decedent's vessel [REDACTED] (Vessel) for its trips in 2005, and recorded it in the logbook assigned to Business.

On April 21, 2011, NAO acknowledged receipt of Appellant's appeal and provided Appellant until May 23, 2011, to supplement the record.<sup>9</sup> On May 16, 2011, OAA received a letter from Appellant which stated her appreciation for being heard again.

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. 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.<sup>10</sup>

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<sup>5</sup> Original File Tab, Notice of Opportunity to Submit Evidence dated July 7, 2010.

<sup>6</sup> Original File Tab, IAD.

<sup>7</sup> Pleadings File Tab, Appellant's appeal received on January 18, 2011.

<sup>8</sup> Pleadings File Tab, Appellant's appeal received on January 18, 2011.

<sup>9</sup> Appeals Correspondence Tab, NAO letter dated April 21, 2011.

<sup>10</sup> See 50 C.F.R. § 679.43 (g) and (k).

## ISSUES

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

Did Appellant establish by a preponderance of the evidence Decedent was the person to whom ADF&G issued the Business Owner Licenses that authorized the logbook fishing trips that met the participation requirements in either 2004 or 2005?

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

## FINDINGS OF FACT

1. In 2004, Business was formed by Partner.<sup>11</sup>
2. In 2005, Decedent became a Partner of Business.<sup>12</sup>
3. In May 2005, Decedent formed LLC and was issued an ADF&G Business Owner License.<sup>13</sup>
4. On May 23, 2005, Decedent purchased Vessel which was used by Business for its logbook fishing trips.<sup>14</sup>
5. In 2005, Business reported seventy-seven bottomfish logbook fishing trips to ADF&G.<sup>15</sup>
6. In 2008, ADF&G issued Decedent a license to operate LLC.<sup>16</sup>
7. In 2008, Decedent reported forty-three halibut logbook fishing trips to ADF&G in the logbook assigned to LLC.<sup>17</sup>
8. In 2008, Decedent passed away in [REDACTED] <sup>18</sup>

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<sup>11</sup> Pleadings File Tab, Appellant's appeal received on January 18, 2011.

<sup>12</sup> Pleadings File Tab, Appellant's appeal received on January 18, 2011; Pleadings File Tab, Letter from Partner dated January 13, 2011.

<sup>13</sup> Pleadings File Tab, Appellant's appeal received on January 18, 2011.

<sup>14</sup> Pleadings File Tab, Agreement dated May 23, 2005.

<sup>15</sup> Original File, Print Summary, created on January 26, 2010.

<sup>16</sup> Original File Tab, Notice of Opportunity to Submit Evidence dated July 7, 2010.

<sup>17</sup> Original File Tab, Print Summary, created on January 26, 2010.

<sup>18</sup> Pleadings File Tab, Appellant's appeal received on January 18, 2011. Original File. Death Certificate received March 31, 2010.

9. On January 5, 2009, Appellant was designated as the Administrator of the Decedent's estate.

## PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS will issue a CHP if an applicant meets certain requirements. To prevail in a case based on successor-in-interest, an Appellant must prove that the predecessor reported five or more bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and reported five or more halibut logbook fishing trips during the recent participation period, 2008.<sup>19</sup>

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.<sup>20</sup>

A "bottomfish logbook fishing trip" means a logbook fishing trip in the qualifying period that was reported to ADF&G 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>21</sup>

A "halibut logbook fishing trip" means a logbook fishing trip in the recent participation period that was reported to ADF&G 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>22</sup>

Logbooks trips are reported in ADF&G issued logbooks to persons who hold an ADF&G Business Owner License.<sup>23</sup>

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 charter halibut permits.<sup>24</sup>

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<sup>19</sup> See 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B)(iii); 50 C.F.R. § 300.67(f)(6) and (7); and 50 C.F.R. § 300.67(d)(1).

<sup>20</sup> See 50 C.F.R. § 300.67(f)(4).

<sup>21</sup> See 50 C.F.R. § 300.67(f)(2).

<sup>22</sup> See 50 C.F.R. § 300.67(f)(3).

<sup>23</sup> See 50 C.F.R. § 300.67(b)(1)(ii) and (b)(3).

<sup>24</sup> See 50 C.F.R. § 300.67(f)(5).

## ANALYSIS

The issue I must resolve in this appeal is whether Appellant can obtain a CHP as a successor-in-interest.<sup>25</sup> Under the CHLAP regulations the putative successor-in-interest must prove that its predecessor reported five or more bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and reported five or more halibut logbook fishing trips during the recent participation period, 2008.<sup>26</sup> The CHLAP regulations require Decedent to have had a Business Owner License which was used to obtain an ADF&G logbook; Decedent would have to have used that logbook to report at least five qualifying trips in either 2004 or 2005 and 2008, for Appellant to qualify for a CHP as a successor-in-interest to Decedent.<sup>27</sup>

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.<sup>28</sup> Upon receiving the license, an applicant is authorized to take logbook fishing trips. To prevail in this appeal, for 2005, Decedent would have needed a business license, then taken at least five qualifying trips in order to be eligible for a CHP.

In this case, Appellant is seeking to have trips made on behalf of Business credited to the Decedent's record. However, the trips referenced in 2005 were recorded in a logbook which was not issued under Decedent's business LLC but under Business. Although Appellant did submit documentation from Partners corroborating that Decedent was a partner in business, no formal documentation from the State of Alaska was ever produced evidencing this business relationship. Nor has any agreement establishing any type of transfer to Decedent from Partners been produced.

Moreover, the 2005 ADF&G Business Owner License submitted by the Appellant does not establish Decedent was in fact the holder of the license since it was Partner's signature on the form. Therefore, the ADF&G Business Owner License was never issued to Decedent. As a result, based on the evidence of record, I have found that Appellant did not hold the requisite license for the 2005 fishing season. Without the requisite license, Decedent could not be issued a logbook and in fact he was not issued one. Therefore, Decedent 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 reaching my decision about this case, I have carefully reviewed the entire record and have been mindful of Appellant's situation. I have also thoughtfully considered the entire record. However, I am bound to follow the CHLAP regulations, and as such, am not authorized to provide Appellant relief under the regulations and the facts of this case.

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<sup>25</sup> See 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B)(iii); 50 C.F.R. § 300.67(f)(6) and (7); 50 C.F.R. § 300.67(d)(1).

<sup>26</sup> See 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B); 50 C.F.R. § 300.67(f)(6) and (7); and 50 C.F.R. § 300.67(d)(1).

## CONCLUSIONS OF LAW

Appellant has not established by a preponderance of the evidence that her predecessor-in-interest had met the requirements of 50 C.F.R. § 300.67(b)(1)(ii)(A).

The IAD is consistent with CHLAP regulations.

## ORDER

The IAD dated November 19, 2010 is upheld. This decision takes effect thirty days from the date issued, December 23, 2011,<sup>29</sup> 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 reverse, modify, or remand 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 December 5, 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 in support of the motion.



Steven Goodman  
Administrative Judge

Date Issued: November 23, 2011

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<sup>29</sup> 50 C.F.R. § 679.43(k) and (o).