

participation requirements.⁴ On July 6, 2010, RAM received a letter from Appellant's attorney stating Appellant is a successor-in-interest qualifying him for a CHP.⁵

On December 21, 2010, RAM sent Appellant the IAD at issue in this case.⁶ 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 21, 2011.

On February 21, 2011, Appellant appealed the IAD.⁷ 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, 2011.⁸ On April 7, 2011, Applicant submitted additional documents to NAO in support of his appeal, including affidavits from [REDACTED] (Prior Owner 1) and [REDACTED] (Prior Owner 2).⁹

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. Although Appellant requested a hearing for his appeal, a hearing may only be ordered if Appellant demonstrated a genuine and substantial issue of adjudicative fact for resolution.¹⁰ Appellant did not articulate a material issue of fact, which if he proved, would help him prevail in his appeal. Appellant's arguments on appeal concerned which business was his and the definition of successor-in-interest. Although these arguments raise legal issues, a hearing may not be ordered on issues of policy or law.¹¹ Accordingly, I close the record and issue this decision without ordering a hearing.¹²

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 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) and at least five halibut logbook fishing trips during the recent period (2008)?

⁴ Appellant's handwritten response to Notice, received June 21, 2010.

⁵ Letter from Appellant's attorney, dated July 2, 2010, received July 6, 2010.

⁶ Original File Tab, IAD dated December 21, 2011.

⁷ Pleadings Tab, type-written letter of appeal, dated and received February 21, 2011.

⁸ Appeals Correspondence Tab, Letter from NAO to Appellant dated April 21, 2011.

⁹ Pleadings Tab, Affidavit of Prior Owner 1 and Prior Owner 2, received April, 2011.

¹⁰ 50 C.F.R. § 679.43(g)(3)(i).

¹¹ 50 C.F.R. § 679.43(g)(3)(i).

¹² 50 C.F.R. § 679.43 (g)(2), (k).

If the answer to the above question is “no,” did Appellant establish by a preponderance of the evidence that either Prior Owner 1 or Prior Owner 2 properly recorded and reported the minimum amount of logbook fishing trips in 2004 or 2005 and in 2008?

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

FINDINGS OF FACT

1. Prior Owner 1 was the owner of [REDACTED] ¹³
2. [REDACTED] was operated by Prior Owner 1 as a sole proprietorship. ¹⁴
3. In 2004, [REDACTED] operated under Alaska Business Owner License # [REDACTED]
4. In [REDACTED] operated under Alaska Business Owner License # [REDACTED]
5. In 2004, [REDACTED] timely and properly reported 90 bottomfish logbook fishing trips.
6. In 2005, [REDACTED] timely and properly reported 78 bottomfish logbook fishing trips.
7. In 2008, [REDACTED] timely and properly reported zero halibut logbook fishing trips.
8. Sometime in 2008, Prior Owner 1 sold [REDACTED] (VESSEL), and other charter fishing equipment to Prior Owner 2.
9. Prior Owner 2 served as a member of [REDACTED]. ²¹

¹³ Original File Tab, Alaska Division of Corporations, Business, and Professional Licensing, License Detail, [REDACTED]

¹⁴ Original File Tab, Alaska Division of Corporations, Business, and Professional Licensing, License Detail, [REDACTED]

¹⁵ Original File Tab, Alaska Division of Corporations, Business, and Professional Licensing, License Detail, [REDACTED]

¹⁶ Original File Tab, Alaska Division of Corporations, Business, and Professional Licensing, License Detail, [REDACTED]

¹⁷ Original File Tab, printed summary for [REDACTED].

¹⁸ Original File Tab, printed summary for [REDACTED].

¹⁹ Original File Tab, printed summary for [REDACTED].

²⁰ Pleadings Tab, Affidavit of Prior Owner 1, received April, 2010.

²¹ Pleadings Tab, Alaska Division of Corporations, Business, and Professional Licensing, Filed Documents, [REDACTED]

10. [REDACTED] was formed as a corporation on January 30, 2008.²²
11. In 2004 and 2005, [REDACTED] timely and properly reported zero bottomfish logbook fishing trips.
12. In 2008, [REDACTED], timely and properly reported 75 halibut logbook fishing trips.
13. In August of 2009, Appellant purchased VESSEL and other charter fishing equipment from Prior Owner 2.²⁵
14. Appellant does business as [REDACTED] under Alaska Business Owner License # [REDACTED].²⁶
15. [REDACTED] was not dissolved until October 22, 2010.²⁷

PRINCIPLES OF LAW

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, among the requirements for establishing his claim is proof 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, 2008.²⁸

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 2008.²⁹

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.³⁰

²² Pleadings Tab, Alaska Division of Corporations, Business, and Professional Licensing, Filed Documents, [REDACTED].

²³ Original File Tab, printed summary for [REDACTED].

²⁴ Original File Tab, printed summary for [REDACTED].

²⁵ Pleadings Tab, Affidavit of Appellant, received April 7, 2010.

²⁶ Original File Tab, Alaska Division of Corporations, Business, and Professional Licensing, License Detail, [REDACTED].

²⁷ Pleadings Tab, Certificate of Cancellation, Dissolution or Withdraw, [REDACTED].

²⁸ 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).

²⁹ 50 C.F.R. § 300.67(b)(1)(ii)(A)-(B), (f)(6)-(7).

³⁰ 50 C.F.R. § 300.67(f)(4).

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.³¹

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.³²

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.³³ This license authorized the logbook fishing trips that are used to meet the minimum participation requirements to qualify for a CHP.³⁴

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 2008.³⁵

On appeal, Appellant argues that [REDACTED] and Appellant’s business are the same entity and, accordingly, that entity met the minimum participation requirements in both the qualifying and recent participation periods.³⁶

While [REDACTED] met the minimum participation requirement for the recent period and [REDACTED] met the minimum participation requirement for the qualifying period, those businesses are not the same entity. Several facts support this conclusion. First, [REDACTED] and [REDACTED] employed different corporate structures in operating their businesses. While [REDACTED] was a sole proprietorship, [REDACTED], was a corporation. Second, the owners of those two entities differed. [REDACTED] was solely owned by Prior Owner 1 and [REDACTED] was owned by [REDACTED]

³¹ 50 C.F.R. § 300.67(f)(2).

³² 50 C.F.R. § 300.67(f)(3).

³³ 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).

³⁴ 50 C.F.R. § 300.67(b)(1)(ii).

³⁵ 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).

³⁶ Pleadings Tab, type-written letter of appeal, received February 21, 2011.

Prior Owner 2. Third, both entities operated under different Alaska Business Owner License numbers. Thus, [REDACTED] and [REDACTED] are not the same entity.

Moreover, neither of those businesses are the same entity as that business which is operated by Appellant. While Appellant purchased VESSEL and other equipment from Prior Owner 2 in August of 2009, [REDACTED] continued to operate until its dissolution in October of 2010. Thus, Appellant's business and [REDACTED] coexisted as businesses for over one year. As such, those two entities are not the same because each business was active during the same period of time.

The next issue I must resolve in this appeal is whether Appellant can obtain a CHP as a successor-in-interest.³⁸ Under the CHLAP regulations, a 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, 2008.³⁹ As NMFS states in pertinent part in the CHLAP regulations: "If [a] person is applying [for a permit] as a successor-in-interest to the person to which ADF&G issued the Business Owner Licenses that authorized logbook trips *that meet the participation requirements described in paragraphs (b)(1)(ii) of this section,*" NMFS will require certain proof of the applicant's status as successor-in-interest.⁴⁰ The participation requirements found in paragraph (b)(1)(ii) are "five (5) bottomfish logbook fishing trips or more during one year of the qualifying period [2004 or 2005]; and...five (5) halibut logbook fishing trips or more during the recent participation period [2008]."⁴¹

As I explained above, [REDACTED] and [REDACTED], are not the same entity. Thus, there is no entity that met the minimum participation requirements for both the recent and qualifying periods. As there is no single entity that met the minimum participation requirements for both the qualifying and recent participation periods, Appellant cannot claim that he qualifies for a charter halibut permit under the successor-in-interest provision of the CHLAP regulations.

While Appellant, on appeal, makes several arguments about the definition of successor-in-interest, the fact that no single entity met the minimum participation requirements for both the qualifying and recent participation periods is dispositive. Appellant has not established he meets the requirements to qualify as a successor-in-interest under the CHLAP regulations.

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

³⁷ Pleadings Tab, Affidavit of Appellant, received April 7, 2010; Pleadings Tab, Certificate of Cancellation, Dissolution or Withdraw, [REDACTED].

³⁸ 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).

³⁹ 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).

⁴⁰ 50 C.F.R. § 300.67(b)(1)(iii)(emphasis added).

⁴¹ 50 C.F.R. § 300.67(b)(1)(ii).

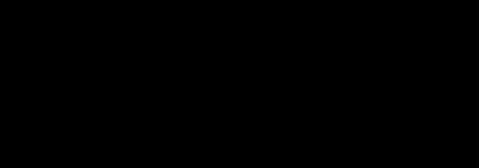
CONCLUSIONS OF LAW

Appellant is not eligible for a permit under the CHLAP rules as he did not prove by a preponderance of the evidence that he achieved the minimum participation requirements for both the qualifying period and the recent period. Additionally, Appellant has not established by a preponderance of the evidence that either Prior Owner 1 or Prior Owner 2 met the requirements of 50 C.F.R. § 300.67(b)(1)(ii)-(iii). Appellant is not eligible for a CHP as a successor-in-interest to Prior Owner 1 or Prior Owner 2. The IAD is consistent with CHLAP regulations.

ORDER

The IAD dated December 21, 2010 is upheld. This decision takes effect thirty days from the date issued, December 29, 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 December 9, 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 29, 2011