



the Official Record showed he met the CHLAP requirements for 2008 by reporting twenty-three charter halibut logbook trips to the Alaska Department of Fish and Game (ADF&G). However, RAM also stated in the Notice that Appellant did not meet the CHLAP requirements for 2004 or 2005. RAM set an August 26, 2010, deadline for Appellant to submit evidence to show he met participation requirements in 2004 or 2005. On August 24, 2010, Appellant responded to the Notice.<sup>6</sup> Appellant's response included a letter from a colleague stating that he knew from personal experience that Appellant participated in charter halibut fishing in 2004 and 2005, and that ADF&G told charter vessel operators during that time period that they were no longer keeping track of halibut harvesting.

On November 30, 2010, RAM issued Appellant the IAD which is the subject of this appeal.<sup>7</sup> In the IAD, RAM denied Appellant's application and reasoned that the Official Record, which RAM uses to determine applicants eligibility, indicated that Appellant only took two bottomfish fishing trip in 2004, and no bottomfish fishing trips in 2005. Since the applicable Charter Halibut Limited Access Program (CHLAP) regulations require a minimum of five qualifying trips in 2004 or 2005, RAM found Appellant ineligible to receive a permit. RAM noted Appellant had the right to appeal the IAD to OAA and that any appeal must be received by January 31, 2011.

On January 10, 2011, Appellant timely appealed the IAD to OAA.<sup>8</sup> On March 3, 2011, NAO acknowledged receipt of Appellant's appeal and provided Appellant until April 4, 2011, to supplement the record.<sup>9</sup> On April 1, 2011, NAO received additional evidence from Appellant.<sup>10</sup> Appellant submitted a copy of a letter written by Steve Hoffman, a former ADF&G biologist, stating confusion existed among operators in the charter industry and his concern about using data from ADF&G logbooks. Appellant also referenced Mr. Hoffman's testimony in another appeal before NOA in which he stated he told guides not to record halibut charter trips.

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>11</sup>

## ISSUES

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

---

<sup>6</sup> Original File Tab, type-written letter, dated August 23, 2010, received August 24, 2010.

<sup>7</sup> Original File Tab, IAD.

<sup>8</sup> Pleadings File Tab, appeal letter, dated January 9, 2011, received January 10, 2011.

<sup>9</sup> Appeals Correspondence Tab, NAO letter dated March 3, 2011.

<sup>10</sup> Pleadings Tab, type-written letter, dated March 30, 2011, received April 1, 2011.

<sup>11</sup> 50 C.F.R. § 679.43 (g) and (k).

Did Appellant establish by a preponderance of the evidence that he properly recorded and reported to the Alaska Department of Fish and Game (ADF&G) the minimum amount of logbook fishing trips in 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, Appellant reported two bottomfish logbook fishing trips to ADF&G.<sup>12</sup>
2. In 2005, Appellant reported no bottomfish logbook fishing trips to ADF&G.<sup>13</sup>
3. In 2008, Appellant reported twenty-three halibut logbook fishing trips to ADF&G.<sup>14</sup>

### 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>15</sup> This license authorized the logbook fishing trips that are used to meet the minimum participation requirements to qualify for a CHP.<sup>16</sup>

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 publication period, namely 2008.<sup>17</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>18</sup> The time limit to submit data about logbook fishing trips was within eight to fourteen days of a qualifying trip, as delineated in the logbooks.<sup>19</sup>

<sup>12</sup> Original File Tab, IAD; Original File Tab, print summary.

<sup>13</sup> Original File Tab, IAD; Original File Tab, print summary.

<sup>14</sup> Original File Tab, IAD; Original File Tab, print summary.

<sup>15</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>16</sup> 50 C.F.R. § 300.67(b)(1)(ii).

<sup>17</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A)-(B), (f)(6)-(7).

<sup>18</sup> 50 C.F.R. § 300.67(f)(4).

<sup>19</sup> Available at: <http://alaskafisheries.noaa.gov/appeals/default.htm>

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>20</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>21</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>22</sup>

## ANALYSIS

The 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, 2004 or 2005, and five or more halibut logbook fishing trips during the recent participation period in 2008.<sup>23</sup>

Appellant properly reported twenty-three halibut logbook fishing trips to ADF&G for 2008. Thus, Appellant meets minimum participation requirements for 2008. However, Appellant reported only two qualifying trips to ADF&G in 2004, and none in 2005. 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.

On appeal, Appellant argues he fished for halibut throughout 2004 and 2005, that his charter halibut trips were not recorded in the ADF&G logbooks because ADF&G officials told him not to record such trips, and that he would be faced with severe financial hardship if not issued a CHP.<sup>24</sup>

Instructions explaining how to complete the 2004 and 2005 Saltwater Charter Vessel Logbooks<sup>25</sup> were provided in the logbooks. With respect to recording halibut those instructions provided as follows:

---

<sup>20</sup> 50 C.F.R. § 300.67(f)(2).

<sup>21</sup> 50 C.F.R. § 300.67(f)(3).

<sup>22</sup> 50 C.F.R. § 300.67(f)(5).

<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).

<sup>24</sup> Pleadings File Tab, appeal letter, dated January 9, 2011, received January 10, 2011.

<sup>25</sup> ADF&G Saltwater Logbooks for the years 2001 through 2011 are displayed on the NMFS, Alaska

BOTTOMFISH	
Primary Stat Area <b>(Incl. Halibut)</b>	The 6-digit area code where you caught most of the bottomfish on this trip. If you fished for bottomfish, but caught none, write the 6-digit code for the location fished the most time on this date and trip.
Maximum Rods Fished	The maximum number of rods/lines fished when targeting bottomfish ( <b>incl. halibut</b> ) and targeting salmon and halibut simultaneously. . . .
No. Boat Hours Fished	The number of boat hours that at least one line was targeting bottomfish ( <b>incl. halibut</b> ) and targeting salmon and bottomfish simultaneously. . . .
Fish Kept & Released	The total number of fish kept and released by client and crew . . . Halibut kept and released is no longer being collected in logbooks, but <b>effort continues to be collected</b> . Halibut kept and released data is collected through established survey programs.
NOTES AND EXAMPLES – RODS, BOAT HOURS	
What species group was targeted?  <b>Example 3:</b> Two Targets Salmon and Bottomfish <b>(including halibut)</b> Simultaneously (i.e., mooching)	. . . record the maximum number of rods and boat hours spent fishing simultaneously for salmon and bottomfish in the appropriate columns in BOTH the salmon and bottomfish sections.
<b>Example 4:</b>  A combination of any of the above	. . . record the maximum number of rods and boat hours spent targeting salmon AND targeting both salmon and bottomfish ( <b>including halibut</b> ) simultaneously in the appropriate columns in the salmon section, and the maximum number of rod and boat hours spent bottomfish AND targeting both salmon and bottomfish simultaneously in the appropriate columns in the bottomfish section.
SPECIAL NOTES AND INSTRUCTIONS	
“Halibut”	The number of halibut kept and released is no longer requested in the logbook. However, we ask that you continue to record your effort.

If Appellant had followed the written instructions supplied with the 2004 and 2005 ADF&G Saltwater Charter Vessel Logbooks, his charter halibut fishing business activity would have been properly recorded and reported. Further, some of Appellant's 2004 logbook was filled out completely and correctly, indicating Appellant possessed the knowledge necessary to correctly fill out a log book.

When it published the Final Rule implementing the CHLAP, NMFS considered the issue of bottomfish reporting, and that some participants may have received confusing or conflicting advice from ADF&G officials. After due consideration of comments received on the Proposed Rule, NMFS stated:

If a business owner did not comply with specified reporting requirements, then the fishing trip will not be counted as either a bottomfish logbook fishing trip during the qualifying period or a halibut logbook fishing trip during the recent participation period for purposes of this rule. Regardless of what any particular ADF&G personnel may say to an operator, each operator or business is responsible for complying with applicable Federal halibut fishery regulations and ADF&G reporting requirements.<sup>26</sup>

In his appeal, Appellant claims that an official from ADF&G told him that he did not need to record halibut charter vessel trips in his logbook. Appellant submitted letters from colleagues and from a former ADF&G employee indicating ADF&G gave incorrect information to charter vessel operators regarding filling out the logbooks. The above NMFS statement, however, is clear and Appellant's testimony and supporting documents are insufficient to overturn the IAD under the CHLAP regulations.

Merely taking trips is not sufficient to meet participation requirements. The regulations require that the bottomfish fishing trip was a) timely reported, b) in a logbook assigned to Appellant based on his business license, and c) with appropriate information. Appellant has not shown that he submitted logbook pages to ADF&G reporting at least five bottomfish logbook fishing trips during one year of the qualifying period (2004 or 2005).

It is Appellant's burden to show that he properly reported to ADF&G at least five bottomfish fishing trips in a logbook with the requisite information during the 2004 or 2005 qualifying period. Although Appellant claims he took at least five bottomfish fishing trips in 2004 or 2005, he did not properly report those trips as bottomfish fishing trips to ADF&G.

In reaching my decision, I have carefully reviewed the entire record. I recognize Appellant's financial hardship and interests in continuing charter halibut fishing, however

---

<sup>26</sup> Final Rule, 75 Fed. Reg. 554, 592 (January 5, 2010).

I am bound by the CHLAP regulations, and I am unable to provide Appellant relief under the regulations and the facts of this case.

### CONCLUSIONS OF LAW

Appellant has not established by a preponderance of the evidence that he properly recorded and reported to ADF&G at least five logbook fishing trips for 2004 or 2005.

Because Appellant did not report at least five logbook fishing trips in 2004 or 2005, he is not eligible for a CHP.

The IAD is consistent with CHLAP regulations.

### ORDER

The IAD dated November 30, 2010, is upheld. This decision takes effect thirty days from the date issued, November 18, 2011,<sup>27</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 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 Time, on the tenth day after the date of this Decision, October 31, 2011. 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: October 19, 2011

---

<sup>27</sup> 50 C.F.R. § 679.43(k) and (o).