



the Notice by completing the “30 Day Notice Business Name” form.<sup>4</sup> Appellant used this document to clarify his business’s name, its ownership, and its organization.

On December 1, 2010, RAM sent Appellant the IAD at issue in this case.<sup>5</sup> In its IAD, RAM determined that Appellant was eligible for one transferable permit with an angler endorsement of four. RAM denied Appellant’s application for a permit endorsed for a maximum of five charter vessel anglers. RAM explained that the highest number of anglers reported on any of [REDACTED] (Vessel) logbook fishing trips for Appellant’s business [REDACTED] (Business) was four in 2005. RAM noted that Appellant had submitted Vessel’s 2004 logbook information to demonstrate eligibility for an angler endorsement of five. However, Vessel’s 2004 logbook was issued to [REDACTED] (LLC), owned by [REDACTED] (Owner). RAM explained that it could not credit Appellant with LLC’s logbook trips in 2004 because the CHLAP regulations require trips to be credited only to the person (an individual or non-individual entity such as a business) to whom ADF&G issued the ADF&G Business Owner Licenses that authorized the logbook fishing trips. Appellant did not hold an ADF&G Business Owner License in 2004, and thus RAM could not credit Appellant with the logbook trips in 2004. 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 31, 2011, Appellant appealed the IAD.<sup>6</sup> In his appeal, Appellant explains that LLC does the bookings and lodging for Business’s charter fishing trips. Appellant argues that the CHLAP regulations should consider businesses working together in the charter fishing industry, and he explains that he would like an angler endorsement of five to better support Business.

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>7</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>8</sup>

## ISSUE

Is Appellant’s transferable permit eligible for an angler endorsement of five?

If the answer to this questions is “no,” I must uphold the IAD.

<sup>4</sup> Original File Tab, Charter Halibut Permit Application Instructions for Processing Response 30 Day Notice of Opportunity to Submit Evidence, signed July 20, 2010, received July 26, 2010.

<sup>5</sup> Original File Tab, IAD dated December 1, 2010.

<sup>6</sup> Pleadings Tab, Appellant’s letter of appeal received January 31, 2011.

<sup>7</sup> Appeals Correspondence Tab, Letter from NAO to Appellant dated April 21, 2011.

<sup>8</sup> 50 C.F.R. § 679.43 (g)(2), (k).

## FINDINGS OF FACT

1. LLC does the bookings and the lodging for Business's charter vessel fishing trips.<sup>9</sup>
2. In 2004, the ADF&G Saltwater Charter Vessel Logbook for Vessel was issued to LLC, owned by Owner.<sup>10</sup>
3. On June 27, 2004, Vessel completed a bottomfish logbook fishing trip with five anglers.<sup>11</sup>
4. In 2005, the ADF&G Saltwater Charter Vessel Logbook for Vessel was issued to Appellant. The maximum number of anglers on a bottomfish logbook fishing trip in 2005 was four.<sup>12</sup>
5. In 2008, the ADF&G Saltwater Charter Vessel Logbook for Vessel was issued to Appellant.<sup>13</sup>
6. In 2010, RAM determined that Appellant was eligible for a single transferable permit for IPHC regulatory area 2C that was endorsed for a maximum of four charter vessel anglers.<sup>14</sup>

## PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS may only issue a charter halibut permit to the individual or entity to which ADF&G issued the ADF&G Business Owner License that authorized the logbook fishing trips that met the minimum participation requirements for a charter halibut permit.<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.<sup>16</sup>

The relevant unit of participation is a logbook fishing trip. A logbook fishing trip is either 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 except that for multi-day trips, the

<sup>9</sup> Original File Tab, Charter Halibut Permit Application Instructions for Processing Response 30 Day Notice of Opportunity to Submit Evidence, signed July 20, 2010, received July 26, 2010.

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<sup>11</sup> Original File Tab, IAD dated December 1, 2010.

<sup>12</sup> Original File Tab, IAD dated December 1, 2010.

<sup>13</sup> Original File Tab, IAD dated December 1, 2010.

<sup>14</sup> Original File Tab, IAD dated December 1, 2010.

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

<sup>16</sup> 50 C.F.R. § 300.67(b)(3).

number of trips will be equal to the number of days of the multi-day trip, e.g., a two-day trip will be counted as two trips.<sup>17</sup>

An applicant must prove participation through logbook fishing trips in two periods: a qualifying period, which is the sport fishing season for halibut in 2004 and 2005, and a recent participation period, which is the sport fishing season for halibut in 2008.<sup>18</sup>

An applicant must prove different levels of participation for a non-transferable permit and for a transferable permit. To receive a non-transferable charter halibut permit, an applicant must have reported a minimum of five bottomfish logbook fishing trips in one year in the qualifying period (2004 or 2005), and a minimum of five halibut logbook fishing trips in the recent participation period (2008). The trips must have been reported under the applicant's ADF&G Business Owner License.<sup>19</sup>

To receive a transferable charter halibut permit, an applicant must have reported a minimum of fifteen bottomfish logbook fishing trips with the same vessel in one year in the qualifying period (2004 or 2005), and fifteen halibut logbook fishing trips with the same vessel in the recent participation period (2008). The trips must have been reported under the applicant's ADF&G Business Owner License.<sup>20</sup>

The angler endorsement number on a charter halibut permit is the highest number of anglers reported on any trip in the qualifying period (2004, 2005), unless the highest number is less than four. If that is the case, the angler endorsement number will be four.<sup>21</sup> A charter vessel angler is a person, paying or non-paying, who uses the services of a charter vessel guide.<sup>22</sup>

## ANALYSIS

### **Is Appellant's transferable permit eligible for an angler endorsement of five?**

According to the Official Record, Appellant qualified for a single permit endorsed for a maximum of four charter vessel anglers. The Official Record had no qualifying information for Appellant in 2004. The Official Record is the information prepared by NMFS on participation in the charter halibut fishing industry that NMFS will use to evaluate applications for charter halibut permits.<sup>23</sup>

<sup>17</sup> 50 C.F.R. § 300.67(f)(4).

<sup>18</sup> 50 C.F.R. § 300.67(f)(6); 50 C.F.R. § 300.67(f)(7).

<sup>19</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A) & (B). In 2004 and 2005, ADF&G did not require participants in the charter halibut fishery to report halibut specifically but did require participants to report halibut effort as bottomfish effort. Therefore, for 2004 and 2005, the regulation evaluates an applicant's participation by bottomfish logbook fishing trips, not halibut logbook fishing trips. Beginning in 2006, ADF&G required participants to report halibut specifically. Proposed Rule, 74 Fed. Reg. 18,178, 18,185 (Apr. 21, 2009).

<sup>20</sup> 50 C.F.R. § 300.67(d)(1).

<sup>21</sup> 50 C.F.R. § 300.67(e)(1), (3) & (5). This is the rule for an applicant's first permit.

<sup>22</sup> 50 C.F.R. § 300.61 (Definitions).

<sup>23</sup> 50 C.F.R. § 300.67(g)(2).

In his appeal, Appellant explains that in 2004, LLC picked up his logbook. That same year, LLC recorded a maximum of five charter vessel anglers. Appellant argues that his permit should be endorsed for a maximum of five charter vessel anglers because Business is associated with LLC. LLC is the company that does all of the bookings and lodging for Business.

The CHLAP regulations state that a permit will be endorsed for the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period, 2004 or 2005. A permit applicant may only claim the right to logbook data if he was the person (the individual or the entity) to which ADF&G issued the ADF&G Business Owner License that authorized logbook fishing trips in that year.<sup>24</sup> In 2004, LLC held the ADF&G Business Owner License that authorized logbook fishing trips, including the June 27, 2004, trip with five charter vessel anglers. Because Appellant did not hold an ADF&G Business Owner License in 2004 and ADF&G did not issue Vessel's logbook to Appellant in 2004, Appellant may not use the June 27, 2004 trip to support his application for an angler endorsement of five.

The Preamble to the Proposed Rule of the CHLAP confirms this. In a description of how the CHLAP would operate, the Preamble explained that "NMFS would endorse the permits with an angler endorsement number equal to the highest number of anglers on any of the *applicant's logbook trips* in 2004 or 2005, [subject to a minimum endorsement of four]."<sup>25</sup> Appellant did not hold an ADF&G Business Owner License in 2004. However, in 2005 and 2008, Appellant held the ADF&G Business Owner Licenses that authorized logbook fishing trips for Vessel. Based on the information reported during these years, Appellant is eligible for a transferable permit endorsed for a maximum of four charter vessel anglers.

In response to a comment regarding the Final Rule of the CHLAP, NMFS specifically rejected the possibility that one business could use the logbook history of another business. NMFS uses an example to illustrate this point in the context of eligibility for a permit generally:

[C]harter business "A" may have the necessary logbook trips for the qualifying period but not the recent participation period and charter business "B" may have the necessary logbook trips for the recent participation period but not the qualifying period. Charter business "A" agrees to sell its logbook history to charter business "B." NMFS will not recognize this agreement. In this case, neither business will qualify for a charter halibut permit.<sup>26</sup>

<sup>24</sup> See 50 C.F.R. § 300.67(b)(1)(ii).

<sup>25</sup> 74 Fed. Reg. 18186 (April 21, 2009) (emphasis added).

<sup>26</sup> 75 Fed. Reg. 578 (January 5, 2010).

Despite the LLC's coordination with Business to arrange charter fishing trips, under the CHLAP regulations, Appellant may not claim the rights to LLC's logbook history.

In reaching my decision in this case, I carefully reviewed the entire record. I recognize that Appellant would like to continue his charter fishing business with an endorsement of five charter vessel anglers. However, based on the evidence provided and applicable regulatory provisions, Appellant does not qualify for an additional angler endorsement.

### CONCLUSIONS OF LAW

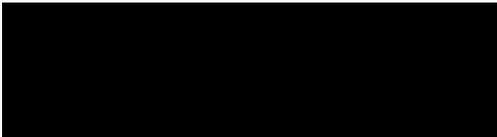
Appellant is eligible for a transferable permit with a maximum angler endorsement of four.

The IAD is consistent with CHLAP regulations.

### ORDER

The IAD dated December 1 2010, is upheld. This decision takes effect thirty days from the dated issued, November 18, 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 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 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: October 19, 2011