



his application that could establish its eligibility for a CHP.<sup>4</sup> On August 30, 2010, Appellant submitted its purchase agreement between it and [REDACTED] (Sellers) dated April 21, 2006 as well as the Notice of successor-in-interest for [REDACTED] dated August 30, 2010.

On November 23, 2010, RAM issued the IAD at issue in this appeal. On January 24, 2011, Appellant's attorney timely appealed the IAD to OAA.<sup>5</sup> In the appeal, Appellant argues that when it purchased Seller's business, it simply filled the shoes of the prior owner and maintained the business as it had been. Appellant's central argument is that it was in fact the successor-in-interest to Seller's business and therefore under the Charter Halibut Limited Access Program (CHLAP) regulations it may rely on Seller's history in obtaining a CHP and should be declared eligible for such.<sup>6</sup>

On April 21, 2011, NAO acknowledged receipt of Appellant's appeal and provided Appellant until May 23, 2011, to supplement the record.<sup>7</sup> NAO received no additional documentation to supplement the record from Appellant or Appellant's attorney.<sup>8</sup>

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>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:

Did Appellant establish by a preponderance of the evidence that Seller properly recorded and reported the minimum amount of logbook fishing trips in 2004 or 2005 and in 2008 thereby making it eligible as a successor-in-interest to receive a CHP?

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

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<sup>4</sup> Original File Tab, Notice of Opportunity to Submit Evidence dated August 3, 2010.

<sup>5</sup> Pleadings File Tab, Appellant's appeal received on January 24, 2011.

<sup>6</sup> Pleadings File Tab, Appellant's appeal received on January 24, 2011.

<sup>7</sup> Appeals Correspondence Tab, NAO letter dated April 21, 2011.

<sup>8</sup> NAO did receive and responded affirmatively to Appellant's request for re-assignment of the administrative judge originally assigned this appeal for adjudication.

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

## FINDINGS OF FACT

1. In 2004, █████ reported twenty-five logbook fishing trips to ADF&G.<sup>10</sup>
2. In 2005, █████ reported seventy-seven logbook fishing trips to ADF&G.<sup>11</sup>
3. On April 21, 2006, Sellers sold its business to Appellant.<sup>12</sup>
4. In 2008, ADF&G issued Appellant a license to operate its charter fishing business.<sup>13</sup>
5. In 2008, Appellant reported to ADF&G forty-two halibut logbook fishing trips.<sup>14</sup>

## 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.<sup>15</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>16</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>17</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)

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<sup>10</sup> Original File, Print Summary, created on January 26, 2010.

<sup>11</sup> Original File, Print Summary, created on January 26, 2010.

<sup>12</sup> Original File Tab, Bill of Sale dated April 21, 2011.

<sup>13</sup> Original File Tab, Notice of Opportunity to Submit Evidence dated August 3, 2010.

<sup>14</sup> Original File Tab, IAD; Original File Tab, Print Summary, created on January 26, 2010.

<sup>15</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>16</sup> See 50 C.F.R. § 300.67(f)(4).

<sup>17</sup> See 50 C.F.R. § 300.67(f)(2).

where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.<sup>18</sup>

Logbooks trips are reported in ADF&G issued logbooks to persons who hold an ADF&G Business Owner License.<sup>19</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>20</sup>

## ANALYSIS

The issue I must resolve in this appeal is whether Appellant can obtain a CHP as a successor-in-interest.<sup>21</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>22</sup> 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.<sup>23</sup> 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].”<sup>24</sup> NMFS explained in the Final Rule that it would “issue the number of permits *for which the dissolved entity qualified* in the names of the successor-in-interest.”<sup>25</sup>

Appellant in this case purchased its business from Sellers in 2006. At the point of sale, [REDACTED] was not eligible for a CHP since it had not satisfied the recent participation requirement of reporting at least five halibut logbook fishing trips in 2008.<sup>26</sup> As a result, Appellant cannot establish eligibility based on the successor-in-interest provisions of the CHLAP regulations, and therefore, may not be awarded a CHP.

<sup>18</sup> See 50 C.F.R. § 300.67(f)(3).

<sup>19</sup> See 50 C.F.R. § 300.67(b)(1)(ii) and (b)(3); 75 Fed.Reg. 554, 556 (January 5, 2010)(“The official record will be based on data from ADF&G and will link each logbook fishing trip to an ADF&G Business Owner License and to the person...that obtained the license.”).

<sup>20</sup> See 50 C.F.R. § 300.67(f)(5).

<sup>21</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>22</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).

<sup>23</sup> 50 C.F.R. § 300.67(b)(1)(iii)(emphasis added).

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

<sup>25</sup> 75 Fed. Reg. 554, 557 (January 5, 2010)(emphasis added).

<sup>26</sup> See Original File Tab, Print Summary created January 27, 2010 showing no trips for [REDACTED] in 2008.

In his appeal, Appellant argues that since the ADF&G license form is ambiguous on its face, Appellant's business was the same entity which was issued the ADF&G license in 2004 and 2005. Appellant argues that for 2004 and 2005, the make-up of ownership differed each year but the business stayed the same. The business was sold in 2006, not 2004 or 2005. Once sold, the business became a different entity bearing a different form, LLC. How [REDACTED] existed prior to the sale or organized itself prior to the sale is not relevant to the issue presented by the IAD.

In regard to Appellant's argument that it is the successor-in-interest to [REDACTED], even assuming for the sake of argument this is true, it still does not negate the fact that prior to the sale [REDACTED] had not met the recent participation requirements in the CHLAP regulations. Thus, even if I find that Appellant is in fact the successor-in-interest to [REDACTED] since [REDACTED] did not meet the regulatory requirements under 50 C.F.R. § 300.67(b)(1)(ii)(B) Appellant cannot be awarded a permit.

In reaching my decision about this case, I have carefully reviewed the entire record and have been mindful of Appellant's efforts to stay in compliance with CHLAP regulations. I have also thoughtfully considered the entire record, including the appeal filed by Appellant's attorney. Appellant's counsel's arguments focus almost exclusively on the claim that Appellant is a successor-in-interest to [REDACTED]. However, what is dispositive in this appeal is whether the putative predecessor met the participation requirements for 2004, 2005, and 2008. As it is beyond dispute that Seller did not meet the participation requirements for 2008, 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. Since the issue of whether [REDACTED] met all the participation requirements is dispositive and resolves whether the IAD is consistent with the CHLAP regulations, I do not reach the other arguments Appellant raises on appeal.

#### CONCLUSIONS OF LAW

Appellant has not established by a preponderance of the evidence that [REDACTED] met the requirements of 50 C.F.R. § 300.67(b)(1)(ii)(B).

Appellant is not eligible for a CHP as a successor-in-interest to [REDACTED]

The IAD is consistent with CHLAP regulations.

#### ORDER

The IAD dated November 23, 2010 is upheld. This decision takes effect thirty days from the date issued, November 21, 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

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

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 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.



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Eileen G. Jones  
Chief Administrative Judge

Date Issued: October 21, 2011