

RAM set a September 7, 2010, deadline for Appellant to submit additional evidence in support of his claim.

On September 30, 2010, Appellant responded to the Notice.⁴ Appellant indicated that ADF&G issued License Holder a logbook for ██████████ in 2008, and that Appellant picked up the Logbooks from ADF&G that year. Appellant stated his purchase agreement, evidencing he purchased his Charter Vessel business from ██████████ (Prior Owner), indicates that CHPs were to transfer from Prior Owner to him, and that he is a successor-in-interest. Appellant submitted a Saltwater Charter Vessel Logbook Release Form⁵ and a copy of his purchase agreement⁶ with his response to the Notice.

On December 20, 2010, RAM sent Appellant the IAD at issue in this case.⁷ In its IAD, RAM denied Appellant a permit because he lacked the requisite logbook trips as explained in the Notice. RAM stated that 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 18, 2011.

On February 16, 2011, Appellant appealed the IAD.⁸ Included in his appeal was a letter from Prior Owner.⁹ 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, 2011.¹⁰ 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.¹¹

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 Prior Owner 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?

⁴ Original File Tab, type-written letter, dated September 19, 2010, received September 30, 2010.

⁵ Original File Tab, Saltwater Charter Vessel Logbook Release Form, received September 30, 2010.

⁶ Original File Tab, Purchase Agreement, received September 30, 2010.

⁷ Original File Tab, IAD dated December 20, 2010.

⁸ Pleadings Tab, Appellant's letter of appeal, dated February 10, 2011, received February 16, 2011.

⁹ Pleadings Tab, hand-written letter from ██████████ received February 16, 2011.

¹⁰ Appeals Correspondence Tab, Letter from NAO to Appellant dated April 21, 2011.

¹¹ 50 C.F.R. § 679.43 (g)(2), (k).

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. In 2004, Prior Owner timely and properly reported seventy-four bottomfish logbook fishing trips to ADF&G.¹²
2. In 2005, Prior Owner timely and properly reported fifty-one bottomfish logbook fishing trips to ADF&G.¹³
3. In 2007, Appellant entered the charter halibut fishing business by purchasing one vessel, a client list, and existing charter bookings from Prior Owner.¹⁴

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, 2008.¹⁵

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 2008.¹⁶

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.¹⁷ The time limit to submit logbook fishing trips reports in 2008 was eight to fourteen days, as delineated in the 2008 Saltwater Charter Logbook.¹⁸

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,

¹² Original File Tab, printed summary.

¹³ Original File Tab, printed summary.

¹⁴ Original File Tab, Purchase Agreement, received September 30, 2010.

¹⁵ 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).

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

¹⁷ 50 C.F.R. § 300.67(f)(4).

¹⁸ Available at: <http://alaskafisheries.noaa.gov/appeals/default.htm>.

the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.¹⁹

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.²⁰

ANALYSIS

The issue I must resolve in this appeal is whether Appellant can obtain a CHP as a successor-in-interest.²¹ 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, 2008.²² 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.²³ 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].”²⁴ 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.”²⁵

Appellant purchased his business from Prior Owner in 2007. At the point of sale, Prior Owner 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. As a result, Appellant cannot establish eligibility based on the successor-in-interest provisions of the CHLAP regulations.

On appeal, Appellant argues his purchase agreement evidences that he is the successor-in-interest to the business that he purchased, that he invested a significant amount of money in his Charter Halibut Business, and that Prior Owner dissolved [REDACTED] and transferred all rights and assets to Appellant. Appellant

¹⁹ 50 C.F.R. § 300.67(f)(2).

²⁰ 50 C.F.R. § 300.67(f)(3).

²¹ 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).

²² 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).

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

²⁴ 50 C.F.R. § 300.67(b)(1)(ii).

²⁵ 75 Fed. Reg. 554, 557 (January 5, 2010)(emphasis added).

supplied a letter from Previous Owner stating that he disbanded his business and sold it to Appellant.

Although Appellant's purchase agreement states he is a successor-in-interest, such an agreement does not establish Appellant is a successor-in-interest under the CHLAP regulations. Similarly, although Appellant indicated that Previous Owner dissolved his business and transferred all rights and assets to Appellant, this also does not establish Appellant is a successor-in-interest under the CHLAP regulations.

It is Appellant's burden to show that he qualifies for a CHP under the CHLAP regulations. Although Appellant claims he qualifies for a CHP as a successor-in-interest, he has not established that he is a successor-in-interest under the CHLAP regulations.

Although Appellant claims he achieved minimum participation for the recent participation period of 2008, the CHLAP regulations do not allow successor-in-interest claims in which the applicant is not a successor-in-interest for both the qualifying and recent participation periods. CHLAP regulations provide that the person must be applying as a successor-in-interest "to the person to which ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that meet *the participation requirements described in paragraphs (b)(1)(ii) of this section.*" (Emphasis added.) The participation requirements in paragraphs (b)(1)(ii) are the participation requirements in the qualifying period and the recent period. 50 C.F.R. § 300.67(b)(1)(ii)(A) (qualifying period) & (B) (recent period).

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.

CONCLUSIONS OF LAW

Appellant has not established by a preponderance of the evidence that Prior Owner met the requirements of 50 C.F.R. § 300.67(b)(1)(ii). Appellant is not eligible for a CHP as a successor-in-interest to Prior Owner. The IAD is consistent with CHLAP regulations.

ORDER

The IAD dated December 20, 2010, is upheld. This decision takes effect thirty days from the date issued, November 28, 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 November 7, 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.

[REDACTED]

Steven Goodman
Administrative Judge

Date Issued: October 28, 2011