

Record. According to RAM, the Official Record showed Appellant did not meet the minimum requirements of having reported at least five bottomfish logbook fishing trips to the State of Alaska Department of Fish and Game (ADF&G) during the qualifying period (2004 or 2005). However, RAM informed Appellant that he could submit evidence to demonstrate his eligibility for a permit. Appellant responded to the Notice by submitting additional evidence, including his 2004 logbook pages.⁶

On October 13, 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 notified Appellant that according to information in the Official Record, Appellant met the participation requirements for 2008. However, RAM also stated that Appellant did not meet the minimum participation requirements in the qualifying period (2004 or 2005). Generally, "minimum participation requirements" for 2004 or 2005 means that an applicant properly reported to ADF&G five or more bottomfish logbook fishing trips. The Official Record showed that Appellant properly reported only one bottomfish logbook fishing trip in 2004 and reported no trips in 2005.

On December 13, 2010, Appellant appealed the IAD.⁸ In his appeal, Appellant argues that he completed a number of fishing trips targeting both salmon and halibut (combination trips) in 2004. Appellant claims the 2004 logbook instructions were confusing, leading him to believe he should record combination trips as salmon trips. Appellant further believed the instructions only required bottomfish fishing trips to be recorded when the trip exclusively targeted bottomfish. Thus, Appellant reported only one bottomfish fishing trip in 2004.

On February 16, 2010, 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 March 18, 2011.⁹ In return, Appellant submitted client letters and documents related to his vessel.¹⁰

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

The broad issue in this case is whether Appellant is eligible for a permit under the CHLAP rules. To resolve that issue, I must answer the following:

⁶ Original File Tab, Appellant's letter to NMFS dated July 4, 2010 (received by RAM July 6, 2010).

⁷ Original File Tab, IAD dated Oct. 13, 2010.

⁸ Pleadings Tab, Appellant's Letter of Appeal dated Dec. 13, 2011.

⁹ Appeals Correspondence Tab, Letter from NAO to Appellant dated Feb. 16, 2011.

¹⁰ Evidence Tab, Appellant's letter and enclosed materials dated Mar. 18, 2011 (received by OAA on Mar. 21, 2011).

¹¹ See 50 C.F.R. § 679.43(g)(2), (k).

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)?

If the answer to the question is “no,” Appellant is not eligible for a permit, and I must uphold the IAD.

FINDINGS OF FACT

1. In 2004, Appellant timely and properly reported one bottomfish logbook fishing trip to ADF&G.¹²
2. Appellant did not timely and properly report all of his bottomfish logbook fishing trips for his 2004 charter trips to ADF&G.¹³
3. In 2005, Appellant timely and properly reported no bottomfish logbook fishing trips to ADF&G.¹⁴
4. In 2008, Appellant timely and properly reported eighteen halibut logbook fishing trips to ADF&G.¹⁵

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.¹⁶ This license authorized the logbook fishing trips that are used to meet the minimum participation requirements to qualify for a CHP.¹⁷

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 2008.¹⁸

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.¹⁹ The

¹² Original File Tab, IAD dated Oct. 13, 2010; Original File Tab, Print Summary.

¹³ Pleadings Tab, Appellant’s Letter of Appeal dated Dec. 13, 2011.

¹⁴ Original File Tab, IAD dated Oct. 13, 2010; Original File Tab, Print Summary.

¹⁵ Original File Tab, IAD dated Oct. 13, 2010.

¹⁶ 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).

¹⁷ 50 C.F.R. § 300.67(b)(1)(ii).

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

¹⁹ 50 C.F.R. § 300.67(f)(4).

time limit to submit data about logbook fishing trips was eight to fourteen days, as delineated in the logbooks.²⁰

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.²¹

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.²²

“Applicant selected year” means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant’s number of transferable and non transferable permits.²³

The Official Record is the information NMFS prepared regarding participation in charter halibut fishing in Area 2C and Area 3A, which NMFS will use to implement the CHLAP and evaluate applications for charter halibut permits.²⁴

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, namely 2004 or 2005, and five or more halibut logbook fishing trips during the recent participation period, namely 2008.²⁵

Appellant properly reported eighteen halibut logbook fishing trips to ADF&G for 2008. Thus, Appellant meets minimum participation requirements for 2008. However, Appellant only reported one qualifying trip 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 explains that he disagrees with RAM’s determination that he had only one bottomfish logbook fishing trip in 2004. Appellant states that he took

²⁰ Available at: <http://alaskafisheries.noaa.gov/appeals/default.htm>.

²¹ 50 C.F.R. § 300.67(f)(2).

²² 50 C.F.R. § 300.67(f)(3).

²³ 50 C.F.R. § 300.67(f)(1).

²⁴ 50 C.F.R. § 300.67(f)(5).

²⁵ See 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).

combination trips in 2004. Appellant contends the 2004 logbook instructions led him to believe that these combination trips should be recorded as salmon trips. Thus, Appellant only recorded bottomfish trips when he specifically fished for halibut. Appellant further claims the logbook instructions were confusing, open to different interpretations.

Instructions explaining how to complete the 2004 Saltwater Charter Vessel Logbooks were provided in the logbooks.²⁶ While Appellant is correct that combination trips should have been recorded as salmon trips, the instructions also clearly stated these particular trips were also to be recorded as bottomfish trips. With respect to recording bottomfish trips, those instructions provided as follows:

BOTTOMFISH	
Primary Stat Area (Incl. Halibut)	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 (incl. halibut) and targeting salmon and halibut simultaneously. . . .
No. Boat Hours Fished	The number of boat hours that at least one rod/line was targeting bottomfish (incl. halibut) 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 effort continues to be collected. . . .
NOTES AND EXAMPLES – RODS, BOAT HOURS	
What species group was targeted? Example 1: One Target Salmon	. . . NOTE: If bottomfish are caught when targeting salmon only, record the number of bottomfish in the appropriate columns in the bottomfish section. . . .
Example 3: Two Targets Salmon and Bottomfish (including halibut) Simultaneously (i.e., mooching)	. . . [R]ecord 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.

²⁶ ADF&G Saltwater Logbooks for the years 2001 through 2011 are displayed on the NMFS, Alaska Region website at: <http://alaskafisheries.noaa.gov/appeals/default.htm>.

<p>Example 4:</p> <p>A combination of any of the above</p>	<p>. . . [R]ecord the maximum number of rods and boat hours spent targeting salmon AND targeting both salmon and bottomfish (including halibut) simultaneously in the appropriate columns in the salmon section, and the maximum number of rod and boat hours spent targeting bottomfish AND targeting both salmon and bottomfish simultaneously in the appropriate columns in the bottomfish section.</p>
<p>SPECIAL NOTES AND INSTRUCTIONS</p>	
<p>“Halibut”</p>	<p>The number of halibut kept and released is no longer requested in the logbook. However, we ask that you continue to record your effort. Complete the first five columns on the far left of each logbook page and the first three columns under the Bottomfish section (state area, no. rods, and boat hrs).</p>

If Appellant had followed the written instructions supplied with the 2004 Saltwater Charter Vessel Logbook, he would have properly recorded and reported his charter halibut fishing business activity.

Appellant explains that the logbook instructions did not require him to record the number of halibut caught in the logbooks. The logbooks, however, required individuals to record all bottomfish trips, including those in which halibut was the target. The instructions explained how an individual should record bottomfish trips targeting halibut, and Appellant correctly interpreted these instructions to properly record his July 10, 2004, bottomfish fishing trip that targeted halibut.²⁷ This indicates Appellant possessed the knowledge necessary to correctly fill out a logbook.

I recognize Appellant found the 2004 logbook instructions confusing. Before NMFS adopted the CHLAP regulations, it considered the issue of bottomfish reporting. 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 . . . a bottomfish trip during the qualifying period.²⁸

As Appellant did not comply with the ADF&G reporting requirements when reporting his combination trips in 2004, he is not eligible for a permit under the CHLAP provisions.

Appellant asks NAO to consider his circumstances and the 2004 combination fishing trips, and based on that, issue him a permit. However, it is Appellant’s burden to show that he properly reported to ADF&G at least five bottomfish fishing trips in a logbook

²⁷ See Original File Tab, Copy of Appellant’s Logbooks submitted July 4, 2010.

²⁸ Final Rule, 75 Fed. Reg. 554, 592 (Jan. 5, 2010).

with the requisite information. In an attempt to meet that burden, Appellant submitted client affidavits from his 2004 combination fishing trips. However, Appellant did not report all of those trips as bottomfish fishing trips to ADF&G.

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). At best, Appellant's evidence shows he took charter trips, but not that he reported them in the manner and by the deadline established by law. Given all of the evidence, I have concluded that Appellant did not properly report more than one bottomfish fishing trip to ADF&G in 2004; therefore, Appellant is not eligible for a permit.

In reaching my decision, I have carefully reviewed the entire record. I have been mindful of Appellant's background and experience. I recognize Appellant's long-standing charter operations and his interest in continuing to fish for halibut. However, I am bound to follow the CHLAP regulations, and as such, Appellant does not qualify for a permit.

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 reported at least five bottomfish logbook fishing trips during either 2004 or 2005. The IAD is consistent with CHLAP regulations.

ORDER

The IAD dated October 13, 2010, is upheld. This decision takes effect thirty days from the date issued, October 11, 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 elects to review 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, September 19, 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.

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10-0112

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Steven Goodman
Administrative Judge

Date Issued: September 9, 2011