

ANALYSIS

Under the Charter Halibut Limited Access Program (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, 2008.¹ 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.² 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].”³

Appellant has not specified the person he is applying on behalf of as a successor-in-interest in his appeal. Appellant does state, however, that he purchased his lodge and vessel [REDACTED] from [REDACTED].⁴ I therefore analyze Appellant’s successor claim based on [REDACTED] Inc as his predecessor.

[REDACTED] did not meet the participation requirements of the CHLAP. Although [REDACTED] purchased the vessel [REDACTED] and made a claim as a successor-in-interest to the prior owner of that vessel, this person was not found to be a successor-in-interest in NAO’s Decision dated November 18, 2011.⁶ Because [REDACTED] is not a successor-in-interest to the prior owner of the vessel [REDACTED] and did not meet the participation requirements of the CHLAP, Appellant cannot be a successor-in-interest to [REDACTED] and cannot claim the logbook history for the vessel [REDACTED].

Even if Appellant established [REDACTED] met the participation requirements for a permit, he still would not qualify as a successor-in-interest.

50 C.F.R. § 300.67(b)(1)(iii) states:

¹ 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).

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

³ 50 C.F.R. § 300.67(b)(1)(ii).

⁴ I note Appellant submitted a copy of a contract for sale signed by [REDACTED] with his application, but this contract is not fully executed.

⁵ See *In Re Application of [REDACTED]* Appeal No. 11-0035; Decision on Remand; and Order Modifying Decision on Remand.

⁶ See *In Re Application of Joshua [REDACTED]* Appeal No. 11-0035; Decision on Remand; and Order Modifying Decision on Remand..

If the person is applying as a successor-in-interest... NMFS will require the following written documentation:

(A) If the applicant is applying on behalf of a deceased individual, the applicant must document that the individual is deceased, that the applicant is the personal representative of the deceased's estate appointed by a court, and that the applicant specifies who, pursuant to the applicant's personal representative duties, should receive the permit(s) for which application is made; or

(B) If the applicant is applying as a successor-in-interest to an entity that is not an individual, the applicant must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

Appellant has provided no documentation that [REDACTED] is either deceased or dissolved. The official charter halibut record does not provide any information on deceased individuals or dissolved entities. It is Appellant's burden to establish by a preponderance of the evidence that he qualifies as a successor-in-interest. I conclude that even if Appellant established [REDACTED] met the participation requirements for a permit, Appellant would still not qualify a successor-in-interest to this person.

CONCLUSIONS OF LAW

RAM correctly denied Appellant's application for a CHP. Appellant is not eligible for a CHP because Appellant did not prove by a preponderance of the evidence that he qualifies as a successor-in-interest.

The IAD is consistent with CHLAP regulations.

ORDER

The NAO Decision dated October 19, 2011, is supplemented by this Decision on Remand. The IAD dated December 15, 2010, is upheld. This decision is effective thirty (30) days from the date issued⁷, August 9, 2012, 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

⁷ 50 C.F.R. § 679.43(k) and (o).

Regional Administrator reverses, modifies, or remands 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 Standard Time, on the tenth day after the date of this Decision, July 20, 2012. 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: July 10, 2012