



On September 14, 2010, Appellant's accountant submitted a letter on Appellant's behalf explaining that Business 2 inadvertently listed additional owners.<sup>4</sup> Appellant indicated that prior to submitting his application he attempted to remove the additional names but was unsuccessful. Appellant also submitted a letter from [REDACTED] (Partners) indicating they never participated in the operation of LLC with Appellant.

On January 19, 2011, RAM issued the IAD at issue in this Appeal.<sup>5</sup> In the IAD, RAM denied Appellant's application for a CHP. The IAD stated Business1 met only the participation requirements for the qualifying period, and not the recent participation period, and that Business 2 met only the recent participation period, and not the qualifying period. RAM stated Appellant did not qualify as a successor-in-interest.

On March 14, 2011, Appellant timely appealed the IAD to OAA.<sup>6</sup> In his appeal Appellant renewed his claim that he participated in the 2005 and 2008 seasons, but did so under different business names. Appellant explained he ran a sole proprietorship in 2005, but decided to change his business name after a purchase of property in 2008.<sup>7</sup>

On April 21, 2011, NAO acknowledged receipt of Appellant's appeal and provided Appellant until May 23, 2011, to supplement the record.<sup>8</sup> On November 23, 2011, NAO issued the initial Decision in this appeal. On December 21, 2011, NAO received a Motion for Reconsideration from Appellant. This Decision vacates the November 23, 2011, initial Decision.

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. There is no disputed material issue of fact, and no need for a hearing for testimony on disputed factual issues. A hearing may only be ordered if Appellant demonstrated a genuine and substantial issue of adjudicative fact for resolution.<sup>9</sup> Appellant did not articulate a material issue of fact, which if he proved, would help him prevail in his appeal. Appellant's arguments on appeal concern legal questions and definitions. Although these arguments raise legal and policy issues, a hearing will not be ordered on issues of policy or law.<sup>10</sup> I therefore exercise 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>11</sup>

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<sup>4</sup> Original File Tab, Appellant's accountant's response to RAM's Notice dated September 14, 2010.

<sup>5</sup> Original File Tab, IAD.

<sup>6</sup> Pleadings File Tab, Appellant's appeal letter received on March 14, 2011.

<sup>7</sup> Pleadings File Tab, Appellant's appeal letter received on March 14, 2011.

<sup>8</sup> Appeals Correspondence Tab, NAO letter dated April 21, 2011.

<sup>9</sup> 50 C.F.R. § 679.43(g)(3)(i).

<sup>10</sup> 50 C.F.R. § 679.43(g)(3)(i).

<sup>11</sup> See 50 C.F.R. § 679.43(g) and (k).

## ISSUES

At issue in this appeal is whether Appellant is qualified to receive a CHP. To resolve this issue, I must evaluate the following:

Did Appellant establish by a preponderance of the evidence he reported a minimum of five bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and a minimum of five or more halibut logbook fishing trips during the 2008 recent participation period.

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

## FINDINGS OF FACT

1. In 2004, Appellant began Business 1.<sup>12</sup>
2. In 2005, Appellant timely and properly reported twenty-one bottomfish logbook fishing trips to ADF&G for Business 1.<sup>13</sup>
3. The 2005 State of Alaska Business License for Business 1 lists this business as a sole proprietorship.<sup>14</sup>
4. On December 27, 2006, Appellant paid for a business license for Business 2.<sup>15</sup>
5. In 2008, Appellant timely and properly reported thirty-one halibut logbook fishing trips to ADF&G for Business 2.<sup>16</sup>
6. The 2008 State of Alaska Business License for Business 2 lists this business as a partnership.<sup>17</sup>
7. In 2008, Appellant did not report any halibut logbook fishing trips to ADF&G for Business 1.<sup>18</sup>
8. Appellant stated there were four owners in his charter halibut permit application for Business 2.<sup>19</sup>

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<sup>12</sup> Pleadings File Tab, Appellant’s appeal letter received March 14, 2011.

<sup>13</sup> Original File, Print Summary.

<sup>14</sup> Original File, Alaska Division of Corporations, Business and Professional Licensing, License Detail License ██████████.

<sup>15</sup> Pleadings File Tab, Appellant’s appeal letter received March 14, 2011.

<sup>16</sup> Original File, Print Summary.

<sup>17</sup> Original File, Alaska Division of Corporations, Business and Professional Licensing, License Detail License ██████████.

<sup>18</sup> Original File Tab, Application page 3.

## PRINCIPLES OF LAW

In general, NMFS is only authorized to issue a CHP to an individual or entity that has been issued an ADF&G Business Owner License. These licenses can include business registration, sport fishing business owner license, sport fish business license, or ADF&G business license. With this license, one is then authorized to take qualifying logbook fishing trips.<sup>20</sup>

To establish one's history of bottomfish logbook fishing trips, one must record qualifying trips in a state-issued logbook. ADF&G issues logbooks to those who hold an ADF&G Business Owner License.<sup>21</sup>

To be eligible for a permit, an applicant must have reported a minimum of five bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and must have reported five or more halibut logbook fishing trips during the 2008 recent participation period.<sup>22</sup>

A "logbook fishing trip" means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the ADF&G in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.<sup>23</sup>

A "halibut logbook fishing trip" means a logbook fishing trip in the 2008 recent participation period that was reported to the ADF&G 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.<sup>24</sup>

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.<sup>25</sup>

A person is the individual or non-individual entity to which the State of Alaska Department of Fish and Game (ADF&G) issued the ADF&G Business Owner License that authorized logbook fishing trips that meet the minimum participation requirements.<sup>26</sup>

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<sup>19</sup> Original File, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A (Application), signed February 24, 2010, received March 1, 2010; printed summary.

<sup>20</sup> See 50 C.F.R. § 300.67(b)(1)(ii) and (3).

<sup>21</sup> 50 C.F.R. § 300.67(b)(1)(ii).

<sup>22</sup> 50 C.F.R. § 300.67(b)(1)(i) and (ii)(A) and (B); 50 C.F.R. § 300.67(f)(6) and (7).

<sup>23</sup> 50 C.F.R. § 300.67(f)(4).

<sup>24</sup> 50 C.F.R. § 300.67(f)(3).

<sup>25</sup> 50 C.F.R. § 300.67(f)(5).

<sup>26</sup> 50 C.F.R. § 300.67(b)(1)(ii).

The term “person” includes an individual, corporation, firm, or association.<sup>27</sup>

## ANALYSIS

Under the CHLAP regulations, a person is the individual, corporation, firm, or association to which ADF&G issued the ADF&G Business Owner Licenses that authorized logbook fishing trips.<sup>28</sup>

The Final Rule on the CHLAP explains that two different businesses cannot combine their logbook histories to qualify for a permit, notwithstanding similarities in ownership in the qualifying period and the recent participation period.<sup>29</sup>

While Business 1 is a sole proprietorship, Business 2 is a partnership with a total of four business partners. While Appellant maintains he is the only owner of both Business 1 and 2, Appellant listed four owners in his charter halibut permit application for Business 2. Additionally, according to the Alaska Division of Corporations, Business and Professional Licensing, Business 1 is a sole proprietorship and Business 2 is a partnership. These businesses, with different names, organizational forms and ownership structures are two distinct “persons” under the CHLAP regulations.<sup>30</sup> The logbook histories of these businesses may not be combined to satisfy the minimum participation requirements for a permit.

On appeal, Appellant argues NMFS should combine Business 1 and Business 2 fishing trips. In support of that argument, Appellant submitted Partners’ statement dated September 7, 2010, which indicated they did not help Appellant operate Business 2 after its creation. Appellant contends that since Partners did not help operate the Business 2, it was still technically a sole proprietorship and the logbook trips could be combined. However, Business 2 is not a sole proprietorship; it is a new business entity in the form of a partnership. Since the trips Appellant references in his appeal were reported in a logbook issued to a new company which he created with three other persons, the CHLAP regulations do not support issuance of a permit to Appellant.<sup>31</sup>

Appellant also argues his ADF&G Business Owner License and not his State of Alaska Business License should be used in determining his CHP eligibility. Appellant argues he is the person to whom ADF&G issued the ADF&G Business Owner License that authorized logbook fishing trips that met minimum participation requirements. The CHLAP regulations, however, define the term “person” to include an individual, corporation, firm, or association.<sup>32</sup> As indicated above, two different businesses cannot

<sup>27</sup> 50 C.F.R. § 300.61.

<sup>28</sup> See 50 C.F.R. § 300.67(b)(1)(ii). ADF&G Business Owner License is a regulatory term that includes a sport fish business registration and a sport fish business owner license. See 50 C.F.R. § 300.67(b)(3).

<sup>29</sup> 75 Fed. Reg. 578 (January 5, 2010).

<sup>30</sup> 50 C.F.R. § 300.67(b)(1)(ii).

<sup>31</sup> 50 C.F.R. § 300.67(b)(2)(i)-(iii).

<sup>32</sup> 50 C.F.R. § 300.61.

combine their logbook histories to qualify for a permit, notwithstanding similarities in ownership in the qualifying period and the recent participation period. In order to determine whether Appellant is the same “person” during the qualifying and recent participation period, it is necessary to look to whether the businesses are the same business during both the qualifying and recent participation period. As stated above, because Business 1 and Business 2 have different names, organizational forms and ownership structures; they are two distinct “persons” under the CHLAP regulations.<sup>33</sup> Appellant, by creating Business 2 with his wife and Partners, created a new entity wholly separated from Business 1. This is dispositive.

In reaching my decision about this case, I have carefully reviewed the entire file, including Appellant’s appeal documentation. I have considered Appellant’s argument that his business will experience hardships if a CHP is not awarded. However, I am bound to follow the CHLAP regulations, and as such, I am not authorized to provide Appellant relief under those regulations and facts of this case.

### CONCLUSIONS OF LAW

Appellant is not eligible for a CHP because he did not prove by a preponderance of the evidence that he is the same person that was issued the ADF&G Business Owner Licenses that authorized logbook fishing trips that meet the minimum participation requirements in both 2004 or 2005 and 2008.

The IAD is consistent with the CHLAP regulations. Appellant is not eligible for a permit under the CHLAP rules.

### ORDER

This Decision vacates the November 23, 2011, initial Decision. The IAD dated January 19, 2011 is upheld. This decision takes effect thirty days from the date issued, April 26, 2012,<sup>34</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 Administrator elects to remand, reverse, or modify 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, April 6, 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 in support of the motion.

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<sup>33</sup> 50 C.F.R. § 300.67(b)(1)(ii).

<sup>34</sup> 50 C.F.R. § 679.43(k) and (o).



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Steven Goodman  
Administrative Judge

Date Issued: March 27, 2012