

NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION

NATIONAL MARINE FISHERIES SERVICE

ALASKA REGIONAL OFFICE

In re Application of)
)
 [REDACTED]) Appeal No. 11-0066
)
 Appellant) ORDER REVERSING IN PART
) AND REMANDING

REGIONAL ADMINISTRATOR’S PARTIAL REVERSAL AND REMAND OF THE DECISION ISSUED BY THE NATIONAL APPEALS OFFICE ON NOVEMBER 16, 2011

I have reviewed the Decision issued by the National Appeals Office on November 16, 2011 (“the decision”), in the appeal of [REDACTED] regarding the Initial Administrative Determination (IAD), which issued Appellant three non-transferrable charter halibut permits, but declined to issue Appellant three transferrable charter halibut permits (Appeal No. 11-0066). The decision concluded that Appellant is not entitled to receive any transferrable charter halibut permits. I cannot concur with the decision’s recommended disposition of this matter. For the reasons stated below, I conclude that the Appellant should receive one transferrable charter halibut permit. Based on my review of the record, Appellant should also receive two additional charter halibut permits, which should likely be non-transferrable permits; however, I request that the National Appeals Office prepare a revised decision that specifically addresses whether these additional permits should be issued as transferrable permits or non-transferrable permits. Pursuant to my authority under 50 C.F.R. § 679.43(o)(1), I reverse the decision, in part, and remand this matter to the National Appeals Office to draft a decision that is consistent with this order.

I have carefully reviewed the record in this matter. Based on that review, I find that the record does not support several of the decision’s factual findings that identify the number of bottomfish fishing trips Appellant reported to ADF&G for Appellant’s vessels [REDACTED] and [REDACTED].¹ The crux of the issue is that both the IAD and the decision failed to properly credit Appellant for all of the bottomfish logbook fishing trips that Appellant reported to ADF&G in 2004 and 2005. Appellant reported 4 bottomfish logbook fishing trips in 2004 with the vessel

¹ Specifically, the record does not support factual findings 4, 5 or 6 as set forth in the decision. Each of these findings in the decision misstates the number of bottomfish logbook fishing trips reported to ADF&G for the specified vessel. In addition, findings 5 and 6 state that Appellant reported “halibut” logbook fishing trips in 2005, when the findings should have stated that Appellant reported “bottomfish” logbook fishing trips in 2005.

and 3 bottomfish logbook fishing trips in 2005 with the vessel , which the IAD and decision failed to count as bottomfish logbook fishing trips. The addition of these extra trips for the in 2005 results in a total of 8 bottomfish logbook fishing trips for the vessel in 2005 and does not affect Appellant’s eligibility for charter halibut permits. The addition of these extra trips for the in 2004 results in a total of 15 bottomfish logbook fishing trips for the vessel in 2004, which in turn causes appellant to be eligible to receive one transferrable charter halibut permit.

NMFS regulations define a bottomfish logbook fishing trip.

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.²

The 2004 Saltwater Charter Logbook pages are organized to enable a charter vessel operator to provide three specific pieces of information for each trip taken on a given date.³ For each trip, the logbook pages provide spaces for the operator to report the following information regarding the vessel’s bottomfish fishing activity: “Primary Bottomfish Stat Area Fished (1 code/trip)”; “Max. No. Rods Fished”; and “No. Boat Hours Fished.” Each row in the logbook represents a fishing trip. If a given row includes an entry of a 6-digit statistical area in the column entitled “Primary Bottomfish Stat Area Fished (1 code/trip),” that entry is properly construed as providing information on “the statistical area(s) where bottomfish fishing occurred,” under the charter halibut regulations.⁴ Thus, any such trip qualifies as a “bottomfish logbook fishing trip” under the Charter Halibut regulations.

The Official Record indicates that the logbook submitted to ADF&G for Appellant’s vessel denotes 11 bottomfish logbook fishing trips in 2004 where the logbook entry identifies the statistical area where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, and the number of rods used from the vessel in bottomfish fishing. The Official Record further indicates that the logbook submitted to ADF&G for Appellant’s vessel denotes 4 additional logbook fishing trips in 2004 where the logbook entry identifies the statistical area where bottomfish fishing occurred, but does not identify the number of rods used from the vessel in bottomfish fishing or the boat hours that the

² 50 C.F.R. § 300.67(f)(2).

³ See Appendix A, excerpt from ADF&G Division of Sportfish, 2004 Saltwater Charter Vessel Logbook, available at http://www.fakr.noaa.gov/appeals/adfg_logbooks/2004.pdf (last visited Dec. 12, 2011). The pages are organized in a matrix of rows and columns, such that the information entered on each row of a page of the logbook represents a different trip. The 2004 logbook pages include several columns for the charter vessel operator to report information about the vessel’s bottomfish fishing activity during each trip.

⁴ 50 C.F.R. § 300.67(f)(2).

vessel engaged in bottomfish fishing.⁵ The decision of the National Appeals Office apparently failed to count these 4 trips as bottomfish logbook fishing trips. Each of these 15 trips reported by Appellant for [REDACTED] qualifies as a “bottomfish logbook fishing trip” as that term is defined in NMFS regulations.⁶

The Official Record indicates that the logbook submitted to ADF&G for Appellant’s vessel [REDACTED] denotes 5 bottomfish logbook fishing trips in 2005 where the logbook entry identifies the statistical area where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, and the number of rods used from the vessel in bottomfish fishing. The Official Record further indicates that the logbook submitted to ADF&G for Appellant’s vessel [REDACTED] denotes 3 additional logbook fishing trips in 2005 where the logbook entry identifies the statistical area where bottomfish fishing occurred, but does not identify the number of rods used from the vessel in bottomfish fishing or the boat hours that the vessel engaged in bottomfish fishing.⁷ Each of these 8 trips reported by Appellant for [REDACTED] [REDACTED] qualifies as a “bottomfish logbook fishing trip” as that term is defined in NMFS regulations.⁸

I conclude that Appellant qualifies for one transferrable charter halibut permit because Appellant reported at least 15 bottomfish logbook fishing trips on a single vessel [REDACTED] to ADF&G in 2004 and reported at least 15 halibut logbook fishing trips on a single vessel to ADF&G in 2008.⁹

Based on my review of the record, I concur with the determinations of RAM and the National Appeals Office that Appellant should receive a total of three charter halibut permits. According to my review of the record, Appellant did not report to ADF&G at least 15 bottomfish logbook fishing trips on a second vessel in 2004. According to my review of the record, Appellant did not report to ADF&G at least 15 bottomfish fishing trips on any vessel in 2005. For reasons explained in the IAD and the decision of the National Appeals Office, therefore, it does not appear that Appellant has established eligibility for a second or third transferrable charter halibut permit. I request, however, that the National Appeals Office revise the decision’s statement of the issue, its analysis of the issue and its conclusions of law, to separately address Appellant’s eligibility for the two additional transferrable permits Appellant requested, and resubmit a

⁵ The Official Record indicates that the Saltwater Charter Vessel Logbooks for Appellant’s vessel [REDACTED] denotes bottomfish logbook fishing trips in statistical area 113450 on August 3 and August 7, 2004, in statistical area 113622 on August 27, 2004, and in statistical area 113416 on September 6, 2004. Original File Tab, 2004 Logbook Trip Printouts for Individual Vessels.

⁶ 50 C.F.R. § 300.67(f)(2).

⁷ The Official Record indicates that the Saltwater Charter Vessel Logbooks for Appellant’s vessel [REDACTED], which Appellant timely provided to ADF&G, reported bottomfish logbook fishing trips in statistical area 113418 on May 21, 2005, in statistical area 113417 on July 8, 2005, and in statistical area 113418 on July 12, 2005. 2005 Logbook Trip Printouts for Individual Vessels obtained from RAM and attached under Evidence Tab.

⁸ 50 C.F.R. § 300.67(f)(2).

⁹ See 50 C.F.R. § 300.67(d)(1).



revised decision for my review. Accordingly, I am remanding this case to the National Appeals Office to prepare a decision that is consistent with this Order.

IT IS SO ORDERED



for James W. Balsiger, Ph.D., Regional Administrator

12-14-11
Date

Appendix A

**To the Regional Administrator's Partial Reversal and Remand of the Decision Issued by
the National Appeals Office on November 16, 2011**



INSTRUCTIONS: Mark each inactive date. Mail white copy to ADF&G; keep pink copy for your records. Return signed sheets for ALL days, active and inactive, between your first and last 2004 charter trips.

ADF&G No. (CEBC Triangle) 1 2 3 4 5 Vessel Name My Boat

Day No. of Multi- Day Trip	D A T E	Port or Site of Off-Loading	Number of Clients and Crew Fishing	Salmon Fishing			Number of King Salmon			Number of Other Salmon			Bottomfish Fishing			Number of Rockfish (not sleeper, etc.)			Number of Lingcod			Number of Salmon Shark			
				Primary Salmon Stat Area Fished (1 code/trip)	Max. No. Rods Fished	No. Boat Hours Fished	28" and Larger	"Shakers" Less Than 28"	Coho	Sockeye	Chum	Primary Bottomfish Stat Area Fished (1 code/trip)	Max. No. Rods Fished	No. Boat Hours Fished	Peagic Rockfish (Bass, etc.)	Other Rockfish	Kept	Released	Kept	Released	Kept	Released	Kept	Released	Kept
1	Mon Apr 19	Sitka	4	113412	4	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
		For overnight charters.																							
1	Tue Apr 20	Sitka	4	113412	4	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
		Mark each date the vessel was not fishing.																							
1	Wed Apr 21	Sitka	4	113412	4	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
1	Thu Apr 22	Sitka	4	113412	4	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
1	Fri Apr 23	Sitka	4	113412	4	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
1	Sat Apr 24	Sitka	4	113412	4	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
1	Sun Apr 25	Sitka	4	113412	4	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	

Record rockfishes only-Do Not record greenlings, sculpins, or any other fishes here.

Record salmon sharks only, no other shark species should be recorded. Spiny dogfish or sleeper sharks should not be recorded here.

Note: All clients targeted both salmon and bottomfish (halibut) for the entire trip. Even without a place holder to record the Halibut harvest, effort is still recorded.

Remember to mark the first and last trips of the season.

Bottomfish Fishing effort information includes effort targeting halibut.

Note: 1 crew member did not fish for salmon, but did target bottomfish.

Note: Crew did not fish; each client fished for salmon and bottomfish.

Note: All clients targeted both salmon and bottomfish for the entire trip. This could occur if a technique targets both species groups (e.g., "mooching").

CERTIFICATION: I certify that the information contained in this document is true and correct to the best of my knowledge.

Check if this is your: FIRST or LAST trip of the season.

09 Guide # 15112004



Alaska Department of Fish & Game Saltwater Sport Fishing Charter Vessel Logbook

INSTRUCTIONS: Mark each inactive date. Mail white copy to ADF&G; keep pink copy for your records. Return signed sheets for ALL days, active and inactive, between your first and last 2004 charter trips.

ADF&G No. (GPRC Triangle) [] Vessel Name []

Table with columns: Day, No. of Multi-Day Trip, Port or Site of Off-Loading, Number of Clients and Crew Fishing, Salmon Fishing (Max. No. Boat Rods Fished, No. Boat Hours Fished, Primary Salmon Stat Area Fished), Number of King Salmon (28" and Larger, "Slackers" Less Than 28"), Number of Other Salmon (Coho, Sockeye, Pink, Chum), Bottomfish Fishing (Primary Bottomfish Stat Area Fished, Max. No. Boat Rods Fished, No. Boat Hours Fished), Number of Pelagic Rockfish (Black bass, etc.), Number of Other Rockfish (Red snapper, etc.), Number of Lingcod, Number of Salmon Shark. Rows include dates from 1/1 to 12/31 with 'Inactive' checkboxes.

CERTIFICATION: I certify that the information provided in this document is true and correct to the best of my knowledge. BUSINESS OWNER/AGENT SIGNATURE [] X GUIDE SIGNATURE [] DATE [] Check if this is your: FIRST [] or LAST [] trip of the season. vt