



additional evidence, aside from Prior Owner's written submission, showing that the State of Alaska considers [REDACTED] a dissolved entity. Although Appellant has an agreement with Prior Owner that his company would be dissolved, Appellant has not established that this company was dissolved under the [Program] regulations. As Appellant has not met his burden in showing that [REDACTED] is a dissolved entity, Appellant is not a successor-in-interest to that entity.<sup>1</sup>

The term "dissolved" in 50 CFR 300.67(b)(1)(iii) is not defined by the Program regulations. In deciding questions as to whether an entity has dissolved for purposes of successor in interest provisions in other limited access programs, the agency has determined that the Restricted Access Management Division ("RAM") has the authority to reasonably interpret its own regulations and that RAM is not bound by private agreements or by a particular State's laws.<sup>2</sup> In this case, RAM in its IAD and NAO in its Decision did not apply Alaska State law for determining whether an entity was dissolved under Program regulations. Instead, both RAM and NAO examined the actions of the entity to determine whether it was dissolved, consulting State of Alaska business licensing records as well as the business activity of the entity. Both the IAD and the Decision noted that Appellant's predecessor is still listed as an active business and filing required reports to the State of Alaska.<sup>3</sup> The IAD also noted that Appellant's predecessor had timely applied to RAM for a charter halibut permit.<sup>4</sup> These facts led RAM and NAO to the conclusion that Appellant's predecessor, [REDACTED] was not dissolved under Program regulations.

The requirement that a successor in interest document that its non-individual predecessor no longer be an active business entity is clear from the preambles for the proposed and final rules establishing the Program. The successor in interest provision is an exception to the general requirement that the entity applying for a charter halibut permit be the same entity that was issued the ADF&G business owner license that authorized the trips that met the participation requirements in the qualifying period and the recent participation period.<sup>5</sup> If the predecessor entity is still an active business, and therefore able to apply for a charter halibut permit, the successor in interest exception is not necessary. NMFS was very clear in the preambles of the proposed and final rules for the Program as to why a successor in interest must demonstrate that the predecessor is dead or dissolved, or no longer active:

. . . NMFS [is prohibited] from crediting the same logbook fishing trip to more than one applicant, from crediting logbook fishing trips made pursuant to the same ADF&G Business Owners License to more than one applicant, and from

<sup>1</sup> Decision, at 5.

<sup>2</sup> For example, *In Re Applications of* [REDACTED] *and* [REDACTED] Appeal No. 96-0075 (January 16, 1997), at 3-4 (located at <http://www.fakr.noaa.gov/appeals/96-0075.pdf>).

<sup>3</sup> IAD, at 5; Decision, at 5

<sup>4</sup> IAD, at 5.

<sup>5</sup> 74 Fed. Reg. 18178, 18186 (April 21, 2009); 75 Fed. Reg. 554, 556-557 (January 5, 2010).

allowing participation by one person in the charter halibut fishing business to support issuance of permits to more than one applicant.<sup>6</sup>

For these reasons, I find RAM's and NAO's interpretation of the term "dissolved" reasonable and consistent with Program regulations.

The modifications provided above do not affect the conclusions of law or disposition reached in the Decision. With the modifications specified above, I affirm the November 23, 2011 Decision of the National Appeals Office as the decision of the agency in this matter. I conclude that NMFS must deny Appellant's application for a charter halibut fishing permit.

**IT IS SO ORDERED.**

Date: 4/12/12

  
*for* James W. Balsiger, Ph.D.  
Regional Administrator  
NOAA Fisheries  
Alaska Region

<sup>6</sup> 74 Fed. Reg. 18178, 18187 (April 21, 2009); 75 Fed. Reg. 554, 557 (January 5, 2010).