

for both the qualifying period and the recent participation period.¹ Given this language, both the IAD and the Decision appropriately examined the question of whether Appellant’s businesses, ██████████ are “the same business” for purposes of determining eligibility for one or more charter halibut permits. Both the IAD and the Decision conclude that ██████████, were not the same business, finding that these businesses had different organizational forms and ownership structures. Given this conclusion, both the IAD and the Decision denied Appellant’s application for a charter halibut permit.

With each application, RAM must consider an applicant’s facts in light of the regulatory requirements. At times, RAM may have to apply a reasonable interpretation of the regulations given the facts of an application. NAO and this office separately review RAM’s interpretation *de novo*. In the instant case, RAM and NAO had to determine whether Appellant’s businesses were the same business in deciding whether Appellant is eligible for a charter halibut permit. Both the IAD and the Decision identify organizational forms and ownership structures as factors in determining whether Appellant’s businesses are the same business.² Because one of Appellant’s businesses was a sole proprietorship during the qualifying period and the other business was an LLC during the recent participation period, and because the sole proprietorship was owned in full by Appellant and the LLC is owned by Appellant and two other individuals,³ the IAD and the Decision conclude that Appellant’s businesses are not the same business. With this conclusion, both the IAD and the Decision articulate an interpretation of the Program’s eligibility regulations – businesses that change organizational form and ownership structure during the qualifying period and the recent participation period in the way that occurred in Appellant’s case are not considered by the agency to be the same business.

RAM should apply an interpretation of the regulations in a consistent fashion unless there is a reasoned explanation for the change. After examining the materials submitted by Appellant in his appeal, it is clear that the agency has not consistently applied the interpretation articulated in the IAD and the Decision when determining whether an applicant’s businesses during the qualifying and recent participation periods are the “same” business. Appellant submitted with his appeal a number of examples where the agency issued charter halibut permits to persons when the organizational form of the person’s business changed between the qualifying period and the recent participation period.⁴ This information demonstrates that the agency has considered certain businesses with different organizational forms to be the same business. In a subset of these examples, the agency considered a business to be the same business when the business was a sole proprietorship during the qualifying period and was an LLC during the recent participation period, demonstrating that the agency has considered

¹ 50 CFR 300.67(b)(1).

² IAD, at 4-5; Decision, at 4-6; Order Denying Motion for Reconsideration, at 1-2.

³ IAD, at 4-6; Decision, at 4-6; Order Denying Motion for Reconsideration, at 1-2.

⁴ Appeal of Initial Administrative Determination, Attachment 1. Examples include changes from sole proprietorship to LLC, corporation to LLP, sole proprietorship to corporation, partnership to LLC, partnership to sole proprietorship, corporation to sole proprietorship, and LLC to sole proprietorship.

businesses that changed organizational forms in a substantially similar way to Appellant to be the same business.⁵ And in two of these examples, the agency considered the business to be the same business when the ownership of the LLC was shared by the individual who had been the sole proprietor with other individuals, indicating that the agency has considered businesses with different ownership structures to be the same business.⁶ These last two examples are identical in every substantive way to Appellant's organizational form and ownership structure during the qualifying period and the recent participation period.

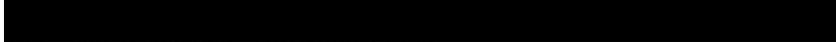
Given these examples, it is clear that in past applications the agency has applied an interpretation for determining a "same" business that differs from the interpretation applied in Appellant's case and without a reasoned explanation as to why Appellant's case differs from these examples. Because the agency has awarded charter halibut permits to applicants with businesses that are substantively identical to those of Appellant's, fundamental fairness requires the agency to treat Appellant similarly and consider Appellant eligible for a charter halibut permit.

Based on my review of the record and the explanation provided above, I find that Appellant's businesses are the same business, thus making Appellant eligible to receive a charter halibut permit or permits. With this finding, I reverse the November 29, 2011 Decision of the NAO. I also remand this matter to NAO and direct NAO to work with RAM as necessary in determining the number and type of charter halibut permits, with area and angler endorsements, to which the Appellant is entitled.

IT IS SO ORDERED

Date: 4/20/12


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

⁵ Appeal of Initial Administrative Determination, Attachment 1, examples of 


⁶ Appeal of Initial Administrative Determination, Attachment 1, example of 
 (was sole proprietorship during qualifying period and was LLC owned by sole proprietor and one other individual during recent participation period); example of  (was sole proprietorship during qualifying period and was LLC owned by sole proprietor and one other individual during recent participation period)