NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
OFFICE OF THE REGIONAL ADMINISTRATOR

In Re Application of	)	
	)	
[redacted]	)	**Appeal No. 11-0010**
	)	
	)	**ORDER MODIFYING**
Appellant.	)	**DECISION**
	)	

REGIONAL ADMINSTRATOR'S REVIEW AND MODIFICATION OF THE NATIONAL APPEALS OFFICE DECISION DATED NOVEMBER 23, 2011

The National Appeals Office ("NAO") issued a Decision dated November 23, 2011, *In Re Application of* [redacted] *as Successor in Interest of* [redacted] Appeal No. 11-0010 ("Decision"). The Decision upholds the Initial Administrative Determination dated November 19, 2010, and denies the Appellant's application for a charter halibut permit under the successor in interest provision of the Charter Halibut Limited Access Program ("Program") regulations. On December 19, 2011, I issued a stay of the Decision until January 17, 2012. On January 13, 2012, I issued a second stay of the Decision until January 27, 2012. I issued these stays to provide additional time for my review of the Decision pursuant to my authority under 50 C.F.R. § 679.43(o).

I have completed my review of the Decision. Based on my review of the record, I concur with the hearing officer's disposition of this matter in the Decision. I write, however, to modify the Decision to clarify and supplement the legal analysis used in the Decision as the basis for denying Appellant a charter halibut permit. Pursuant to my authority under 50 C.F.R. 679.43(o)(1), I am modifying the Decision to provide additional legal analysis in support of the agency's decision in this matter.

As the Decision correctly notes, under the Program regulations at 50 C.F.R. §300.67(b)(1)(iii), 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] On the application for a charter halibut permit, Appellant indicated that [redacted] owned two businesses that conducted charter fishing operations during the qualifying and the recent participation periods.[2] These businesses are [redacted]. In order for Appellant to obtain a charter halibut permit on behalf of [redacted] estate, the record

[1] Decision, at 5.
[2] Original File Tab, Charter Halibut Permit Application of [redacted], at 2.

must demonstrate that at least one of these businesses meets the participation requirements for both the qualifying and the recent participation periods.

Starting with the recent participation period, the record contains information demonstrating that was an owner of a charter fishing business named from its formation in May 2005 until his death in October 2008.[3] The record also indicates that the Alaska Department of Fish & Game (ADF&G) issued a Business Owner License to in 2008,[4] and that reported more than five halibut logbook fishing trips in 2008.[5] Based on this information, the record demonstrates that meets the participation requirement for the recent participation period. Conversely, the record contains no information demonstrating that was issued an ADF&G Business Owner License in 2008 or reported any halibut logbook fishing trips in 2008.[6] does not meet the participation requirements for the recent participation period; therefore, it is not eligible for a charter halibut permit.

Because meets the recent participation period requirements, I must determine whether it meets the participation requirements of the qualifying period. The record contains no evidence that was issued an ADF&G Business Owner License for 2005 or that it reported any bottomfish logbook fishing trips in 2005. Without a 2005 ADF&G Business Owner License issued to it, was not authorized to make bottomfish logbook fishing trips in 2005.

However, the record does contain information indicating that vessel, the was used to make bottomfish logbook fishing trips in 2005.[7] According to the record, these trips were reported in a 2005 State of Alaska Saltwater Charter Logbook issued to for the sport fishing business issued ADF&G Business Owner License Number .[8] The record also contains a notarized letter from other partners in which describes as a partner in in 2005 and that was compensated as an owner.[9] This information, coupled with the fact that was not issued a 2005 ADF&G Business Owner License, supports my conclusion that the trips made by the in 2005 were properly credited to

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[3] Original File Tab, Articles of Organization for . At Original File Tab, Alaska Corporations Business and Professional Licensing, Filed Documents, is listed as an active LLC in good standing as of July 2, 2010 and that estate is a 50 percent owner of the LLC.

[4] Original File Tab, Logbook Business Summary for for 2008.

[5] Original File Tab, Print Summary for created on January 27, 2010.

[6] According to a notarized statement, was sold and dissolved in 2006. Pleadings Tab, Letter from Appellant to NAO, dated January 17, 2011, Exhibit A.

[7] Original File Tab, Email from Appellant to RAM dated July 16, 2010.

[8] Original File Tab, 2005 Saltwater Sport Fish Charter Logbook Sign-Out and Vessel Registration Form for the

[9] Pleadings Tab, Letter from Appellant to NAO, dated January 17, 2011, Exhibit A.

. As stated in NMFS's response to comment 72 in the preamble to the final rule for the Charter Halibut Limited Access Program, "The initial allocation of permits is to businesses, and the criterion for a continuous business is not the continuity of the owners but the continuity of the business."[10] The trips made by the in 2005 cannot be credited to . Since it does not meet the participation requirements of the qualifying period, is not eligible for a charter halibut permit. Because neither of businesses meet the participation requirements for both the qualifying and the recent participation periods, is not eligible to receive a charter halibut permit and Appellant is not eligible to receive a permit as successor in interest.

Two clarifications in the Decision are needed. First, I must correct the Decision's characterization of 50 C.F.R. §300.67(b)(1)(ii). The Decision states that 50 C.F.R. §300.67(b)(1)(ii) requires an applicant for a charter halibut permit to be "an individual or entity *holding* an ADF&G Business Owner License" (emphasis added).[11] I disagree with this interpretation. Nowhere in 50 C.F.R. §300.67(b)(1)(ii) is there a requirement that an applicant prove that it "held" an ADF&G Business Owner License and it is unclear what would constitute "holding." The language of the regulation is clear: "NMFS will issue a charter halibut permit to a person who meets the following requirements . . . (ii) The 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 Licenses that authorized logbook fishing trips that meet the minimum participation requirements described in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section . . . ." (emphasis added).[12] In 2005, the ADF&G Business Owner License Number was issued to and not to the business's individual partners.

Second, the Decision makes a finding of fact that that in 2005, became a partner in .[13] However, the Decision then states:

> Although Appellant did submit documentation from Partners corroborating that Decedent was a partner in no formal documentation from the State of Alaska was ever produced evidencing this business relationship. Nor has any agreement establishing any type of transfer to Decedent from Partners been produced.[14]

To the extent that this language casts doubt on the finding of fact, I clarify that while the record does not contain formal documentation from the State of Alaska evidencing this business relationship and no agreement establishing any type of transfer to from Partners has been produced, there is ample evidence in the record that supports the finding of fact that was a full partner in in 2005.

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[10] 75 Fed. Reg. 554, 578 (January 5, 2010).
[11] Decision, at 5.
[12] 50 C.F.R. §300.67(b)(1)(ii).
[13] Decision, at 3.
[14] Decision, at 5.

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 [redacted] application for a charter halibut fishing permit.

IT IS SO ORDERED

Date: 1/25/12

[redacted]

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