

Appellant entered the charter halibut fishing business in 2009 by purchasing one vessel, the ██████████ and a lodge, the ██████████ and that the lodge and vessel had been used in the charter fishing business since at least 2004.² The Decision also finds as fact that in 2010 Appellant purchased two more vessels, the ██████████ and the ██████████ for his charter fishing business and that these vessels had been used in the charter fishing business since at least 2004.³ In determining whether Appellant was eligible for a charter halibut permit as a successor in interest, the Decision states “Appellant submitted no evidence that any of the vessels were used to complete five or more bottomfish logbook fishing trips during the qualifying period or five or more halibut logbook fishing trips during the recent participation period.”⁴ The Decision concludes that Appellant did not demonstrate by a preponderance of the evidence that his vessels or his lodge met the participation requirements of the Program.⁵ The Decision ends the analysis of Appellant’s successor in interest claim by stating the following: “Since I conclude that, based on the evidence presented, Appellant’s vessels and lodge did not meet the minimum participation requirements for a permit, I do not address whether Appellant is a successor in interest under the [Program] regulations.”⁶

• The Decision places heavy emphasis on Appellant’s failure to submit evidence demonstrating that Appellant’s vessels and lodge meet the minimum participation requirements of the Program. I agree with the Decision that Appellant submitted little in the way of evidence concerning logbook fishing trips made by Appellant’s vessels. I also agree with the Decision that it is incumbent on Appellants to submit evidence supporting their claim. However, the agency specifically created an Official Charter Halibut Record containing information about participation in the charter halibut fishery that NMFS uses to evaluate applications for charter halibut permits.⁷ The Official Charter Halibut Record is the information prepared by the National Marine Fisheries Service on participation in charter halibut fishing in Areas 2C and 3A *that NMFS will use* to implement the Program and evaluate applications for charter halibut permits.⁸ According to the Official Charter Halibut Record, more than five bottomfish logbook fishing trips were reported for the ██████████ in 2004 and more than five halibut logbook fishing trips were reported for the ██████████ in 2008. According to the Official Charter Halibut Record, no bottomfish logbook trips were reported for the ██████████ or the ██████████ in either 2004 or 2005.

Given the information in the agency’s Official Charter Halibut Record, one of Appellant’s vessels ██████████ meets the minimum participation requirements for a charter halibut permit. Therefore, I remand this case to NAO to resolve the issue of whether Appellant is a successor in interest. The Decision aptly notes that Appellant’s submitted materials do not explicitly identify the individual or non-individual entity on whose behalf he is applying as the successor in interest. In resolving this question as well as this appeal, I direct NAO to consider a related appeal, *In Re Application of* ██████████ Appeal

² Decision, at 3 (Finding of Fact #4).

³ Decision, at 3 (Finding of Fact #5).

⁴ Decision, at 5.

⁵ Decision, at 6.

⁶ Decision, at 6.

⁷ See 74 Fed. Reg. 18,178, 18,183 (April 21, 2009) and 75 Fed. Reg. 554, 556 (January 5, 2010) (explaining Official Charter Halibut Record in preambles to proposed and final rules for the Program).

⁸ 50 C.F.R. §300.67(f)(5).

No. 11-0035.⁹ Both appeals include successor in interest claims for logbook fishing trips made by the [REDACTED].

IT IS SO ORDERED.

Date: 1/26/12

[REDACTED]
James W. Balsiger, Ph.D.
Alaska Region
Regional Administrator

for

⁹ I am remanding the Decision in *In Re Application of* [REDACTED] Appeal No. 11-0035, to NAO by separate Order.