

statements in the final rule implementing the Program that the logbook histories of two different businesses cannot be combined to satisfy the minimum participation requirements for a permit.¹³ However, in *In Re Application of* [REDACTED],¹⁴ I found that the agency has considered certain businesses with different organizational forms and ownership structures across the participation periods to be the same business for purposes of Program eligibility. Particularly relevant to this case, the agency has considered a business to be the same business when the business was a sole proprietorship during the qualifying period and an LLC during the recent participation period, including instances when the ownership of the LLC was shared by the individual who had been the sole proprietor with other individuals.¹⁵ There is nothing in the record or the Decision on Remand that indicates a conclusion different from the one in [REDACTED] should be reached in this case. Therefore, I find that [REDACTED] and [REDACTED] [REDACTED] are the same business and that [REDACTED] met the participation requirements for a charter halibut permit.

The next requirement is that the entity to which Appellant claims to be the successor has dissolved. The Decision on Remand concludes that [REDACTED] is not dissolved, relying on Appellant's own statements that the LLC is not dissolved and the State of Alaska's ("State's") Corporations Division website listing the LLC as non-compliant rather than dissolved as the basis for this conclusion.¹⁶ Also supportive of this conclusion is the State's recent institution of involuntary dissolution proceedings against [REDACTED]. On March 22, 2012, the State sent [REDACTED] a Sixty Day Notice of Pending Involuntary Dissolution or Revocation, ("Notice"), directing the LLC to come into compliance within sixty days from the date of the Notice, or by May 21, 2012.¹⁷ The Notice stated that failure to bring the LLC into compliance by that date "may result in Involuntary Dissolution or Revocation of the entity's authority to transact business in the State of Alaska."¹⁸ A recent examination of the State's Corporations Division's website shows that [REDACTED] LLC is still listed as non-compliant.¹⁹ All of this information support the conclusion that [REDACTED] LLC is not a dissolved entity.

Because Appellant cannot demonstrate that [REDACTED] LLC is dissolved, I could end my examination of this appeal at this point, as NAO did in the Decision on Remand. While agency determinations on charter halibut appeals cannot be stayed indefinitely while the State makes its decisions on corporate status, I am concerned that if left here, the resolution of Appellant's appeal could be viewed as being based on the lack of action by the State rather than the merits of Appellant's claim. Although [REDACTED] LLC is not yet dissolved, dissolution appears imminent -- according to the State's website, the most recent Biennial Report for [REDACTED] LLC was filed January 2, 2007, seeming to indicate that the LLC

¹³ Decision on Remand at 3.

¹⁴ Charter Halibut Appeal No. 11-0026, Regional Administrator's Order Reversing Decision issued April 20, 2012.

¹⁵ *In Re Application of* [REDACTED] Appeal No. 11-0026, Order Reversing Decision at 2-3.

¹⁶ Decision on Remand at 3.

¹⁷ Evidence Tab, Letter from The Corporations Section of the Alaska Division of Corporations, Business and Professional Licensing, to [REDACTED] LLC, dated March 22, 2012. According to the Notice, [REDACTED] LLC is "Non-Compliant for failure to file one or more Biennial Reports and/or lack of required Registered Agent information."

¹⁸ *Id.*

¹⁹ See <http://commerce.alaska.gov/CBP/Main/CorporationDetail> [REDACTED] visited on July 5, 2012.

remains out of compliance.²⁰ Therefore, the following considers whether Appellant would be considered a successor in interest under the Program if [REDACTED] LLC was a dissolved entity.

Neither the regulations nor the preambles to the proposed and final rules define the term “successor in interest.” However, the preamble to the proposed rule provides examples for a successor in interest to a dissolved non-individual entity:

For example, a partnership has dissolved and two former partners submit separate and timely applications. If each applicant proves that they are a successor-in-interest to the partnership, NMFS would award the permits in the names of the two successors-in-interest that applied. Similarly, if a corporation qualifies for permits but has dissolved and three former shareholders of the corporation submit timely applications, each proving that they are a successor-in-interest to the corporation; NMFS would award the permits in the names of the three former shareholders. If only two of the three former shareholders submit timely applications, however, NMFS would award the permits in the names of the two former shareholders that submitted timely applications.²¹

These examples indicate that, for purposes of the Charter Halibut Program, successors in interest to a dissolved non-individual entity are those individuals who were partners in or shareholders of an entity that met the requirements for a permit. But for the dissolution, these partners or shareholders would have applied for a permit on behalf of the entity. [REDACTED] LLC is a limited liability company with shareholders.²² While I am unable to determine from the record who are the current shareholders of [REDACTED] the record contains no documentation demonstrating that Appellant is a shareholder. Appellant is not listed as a shareholder in the last biennial report filed by the [REDACTED]²³ and Appellant stated that he does not know who owns the 1.5% of the [REDACTED] not owned by [REDACTED].²⁴ Because Appellant cannot document that he is a shareholder in [REDACTED] he would not be a successor in interest to [REDACTED] under the Program even if the [REDACTED] was currently dissolved.

²⁰ See <http://commerce.alaska.gov/CBP/Main/CorporationDetail> [REDACTED] visited on July 5, 2012.

²¹ 75 Fed. Reg. 18178, 18187 (April 21, 2009).

²² Original File Tab, Alaska Division of Corporations, Business and Professional Licensing, Limited Liability Company Online 2007 Biennial Report.

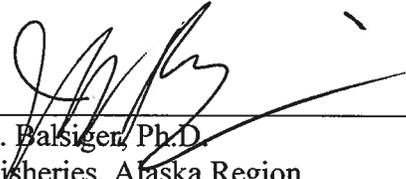
²³ Id.

²⁴ Decision on Remand at I.

As supplemented and modified by this Order, I affirm the April 11, 2012 Decision on Remand 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: July 5, 2012



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