

boat hours the vessel was used for bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing. See 50 C.F.R. § 300.67(f)(2) and (4).

In the proposed CHLAP regulations, NMFS explained: “The documentation to prove qualifying participation in the charter vessel fishery would be limited to saltwater charter vessel logbooks issued by the ADF&G.”¹ NMFS went on in more detail:

If a trip was not reported within those time limits, NMFS would not consider it a logbook fishing trip for purposes of this proposed rule, and it would not serve as the basis for NMFS to issue a charter halibut permit. Hence, a permit applicant could not add a trip to the official record years after the trip should have been reported to the State.²

NMFS emphasized that trips had to be reported “within ADF&G time limits.” NMFS reiterated this:

As with the reporting of the trip itself, the business owner would have had to report the[] data within ADF&G time limits. An applicant could not change or add data that would make a trip a bottomfish fishing trip or halibut logbook fishing trip after the trip should have been reported to ADF&G.³

As further explained by NMFS in the Final CHLAP rules:

[T]he basic unit of participation for receiving a charter halibut permit will be a logbook fishing trip, which is a trip that was reported to ADF&G in a saltwater charter logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip. *If a trip was not reported within those time limits, NMFS will not consider it a logbook fishing trip for purposes of a charter halibut permit application.*

This idea is reiterated in other responses NMFS made to comments to the Final CHLAP rules:

Charter halibut permits allocated under this rule will be based solely on logbook fishing trips...The [North Pacific Fishery Management] Council chose to rely on the fishing data in ADF&G Saltwater Charter Logbooks as the best available source of information on participation in the charter fishery...Charter halibut permits will be allocated under this rule based on the participation of businesses in the charter halibut businesses in the charter halibut fishery using logbook fishing trips as evidence of participation...The ADF&G saltwater charter logbook data for the

¹ 74 Fed. Reg. 18178, 18184.

² 74 Fed. Reg. 18178, 18185.

³ 74 Fed. Reg. 18178, 18185.

qualifying period (2004 and 2005) and the recent participation period (2008) are the best information for the purposes of this rule.⁴

The time limit to submit data about logbook fishing trips was eight to fourteen days, as clearly delineated in the logbooks.⁵ Since I have found as a fact in the Decision that Appellants did not prove they submitted their logbooks to ADF&G, they are not eligible for a charter halibut permit under the general eligibility requirements.

Appellants argue that they took more trips than reflected in the Official Record. In the Decision, I considered this argument, including evidence in support thereof submitted by Appellants. As I stated in the Decision, at best Appellants' evidence would show they took charter halibut trips in 2005, but it does not show they timely reported the requisite data about those trips to ADF&G.⁶

NMFS chose the requirement of logbook fishing trips. Logbook fishing trips have both a time, substance, and form component: they must be sent within eight to fourteen days; they must include certain information outlined above concerning catch or boat usage, and; they must be supplied to ADF&G on state-issued logbook pages. The regulations are clear that if Appellants prove by a preponderance of the evidence that they submitted state-issued logbook pages with the outlined information to ADF&G within eight to fourteen days of a qualifying trip, then they should be credited with that trip. In the absence of that type of evidence, the Official Record's account of the number of qualifying trips stands. To be clear, contrary to what Appellants appear to be arguing in their Motion for Reconsideration, the Decision does not indicate that in attempting to meet their burden of proving they timely submitted state-issued logbook pages with the requisite information, Appellants only way of proving that was with the logbooks themselves. As indicated above, in the Decision Appellants' non-logbook evidence was considered.

With respect to Appellants' concern that they were not required to report halibut fishing in 2004 or 2005, NMFS addressed this concern in both the Proposed Regulations and Final Regulations:

As discussed in the preamble to the proposed rule...the basic unit of participation for purposes of this rule is a logbook fishing trip. During the qualifying period of 2004 or 2005, participation will be measured by bottomfish logbook fishing trips because ADF&G did not require halibut kept or released to be reported as a distinct species. *Halibut were considered to be bottomfish during that period.* ADF&G attached instruction to each logbook that stated that bottomfish fishing effort included effort targeting halibut. Reporting of any one of three types of

⁴ 75 Fed. Reg. 554, 590-91. See also 75 Fed. Reg. 554, 592 (This rule relies on ADF&G charter logbook data to determine participation); 75 Fed. Reg. 554, 593 ("the bottomfish logbook fishing trip data are sufficiently accurate as evidence of participation in the fishery for purposes of this rule").

⁵ Available at: <http://alaskafisheries.noaa.gov/appeals/default.htm>

⁶ Decision dated February 11, 2011, Page 6.

[REDACTED]
Appeal No. 10-0065

bottomfish effort data would qualify a trip as a bottomfish logbook trip for purposes of this rule.⁷

Appellant's motion for reconsideration is denied. Pursuant to NAO policy, the effective date of the Decision is now May 31, 2011. The Regional Administrator has thirty days from April 29, 2011 for review of the Decision pursuant to 50 C.F.R. § 679.43(o).

[REDACTED]
Eileen G. Jones
Chief Administrative Judge

Date Issued: April 29, 2011

⁷ 75 Fed. Reg. 554, 592 (emphasis added).