

On April 1, 2011, OAA received Appellant's timely appeal of the IAD.⁶ In the appeal, Appellant explained he intended to apply for a CHP prior to the application deadline. However, in preparation, Appellant looked at his 2005 logbook and incorrectly concluded that he had properly reported only three logbook fishing trips to the State of Alaska Department Fish and Game (ADF&G) in his 2005 logbook. Appellant knew he needed at least five properly reported logbook fishing trips to be eligible for a CHP and therefore did not apply.⁷

In February 2011, Appellant spoke with a representative from ADF&G and was informed that he had properly reported nineteen logbook fishing trips in 2005 and had met the requirement for the qualifying period (2005) to be eligible for a CHP. Appellant filed his application for a CHP approximately a week later.

Upon review of Appellant's appeal and case record, I have determined that the record contains sufficient information on which to reach a final judgment. There is no disputed material issue of fact, and no need for a hearing for testimony on disputed factual issues. I therefore am exercising my discretion to not hold a hearing and issue a decision based on the case record. Accordingly, I close the record and issue this decision.⁸

ISSUES

At issue in this appeal is whether RAM correctly denied Appellant's application for a CHP. To resolve this issue, I must evaluate the following:

Did Appellant establish by a preponderance of the evidence that he filed his application for a CHP by the April 5, 2010 application deadline specified in the Federal Register?

If the answer to the question is "no," I must conclude that Appellant did not timely file his application for a CHP and therefore uphold the IAD.

FINDINGS OF FACT

1. On January 12, 2010, NMFS published a Notice in the Federal Register that announced the application period for the CHP.⁹
2. The application period for submission of a CHP application started on February 4, 2010 and ended on April 5, 2010.¹⁰

⁶ Pleadings File Tab, Appellants' appeal letter received on April 1, 2011.

⁷ Pleadings File Tab, Appellants' appeal letter received on April 1, 2011.

⁸ See 50 C.F.R. § 679.43 (g) and (k).

⁹ 75 Fed. Reg. 1595 (January 12, 2010).

¹⁰ 75 Fed. Reg. 1595 (January 12, 2010).

3. Applications were to be obtained via internet or by requesting a CHP application from NMFS.¹¹
4. In March 2010, Appellant mistakenly assumed that he only properly reported three logbook fishing trips to ADF&G in 2005. Appellant had forgotten that ADF&G had changed its reporting format that year.¹²
5. In February 2011, Appellant spoke with an ADF&G representative and was informed that he had properly reported nineteen logbook fishing trips, not three logbook fishing trips, in 2005 to ADF&G.¹³
6. On February 14, 2011, RAM received Appellant's CHP application signed and dated on February 11, 2011.¹⁴
7. On February 15, 2011, RAM issued its IAD and denied Appellant's application for a CHP because it was not filed timely.¹⁵

PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS will issue a CHP if the applicant meets certain requirements. One such requirement is that the applicant applies for a CHP by submitting a CHP application within the application period (not less than 60 days) as specified in the Federal Register.¹⁶ The CHLAP regulations further provide that NMFS will deny any application submitted after the last day of the application period.¹⁷

In accordance with its regulations, on January 12, 2010, NMFS informed the public of the CHP application period through publication of a notice in the Federal Register. The notice specified the application period beginning February 4, 2010, and ending April 5, 2010. In the notice, NMFS also informed the public that it could obtain an application on the internet or by requesting an application from NMFS. Lastly, all CHP applications submitted after the deadline would be considered untimely and denied.¹⁸

¹¹ 75 Fed. Reg. 1595 (January 12, 2010).

¹² Original File Tab, Letter attach to Application from Appellant received on February 14, 2011.

¹³ Letter attached to Appellant's application received on February 14, 2011 ;Original File Tab, Summary of Official Record for Appellant.

¹⁴ Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A (Application).

¹⁵ Original File Tab, IAD dated February 15, 2011.

¹⁶ 50 C.F.R. § 300.67 (b)(1)(i) and 300.67 (h)(1).

¹⁷ 50 C.F.R. § 300.67(h)(1).

¹⁸ 75 Fed. Reg. 1595 (January 12, 2010).

ANALYSIS

The regulation governing the CHLAP require that CHP applications be submitted within the application period and that applications submitted after the application deadline are deemed untimely and denied.¹⁹

On January 12, 2010, NMFS published a Notice in the Federal Register that announced the application period for a CHP. The Notice provided the following:

...The application period for charter halibut permits under the Charter Halibut Limited Access Program begins on February 4, 2010, and ends at the close of business on April 5, 2010... Applications postmarked after April 5, 2010, or delivered after the close of business on April 5, 2010, will be denied.²⁰

By publishing this announcement, NMFS put possible applicants on notice of the deadline. However, Appellant chose to not file due to his confusion surrounding the new reporting format. Although Appellant later realized his mistake, by that time, RAM had no authority under the CHLAP regulations to accept Appellant's application for processing. Similarly, under the CHLAP regulations, NAO has not been authorized to accept late applications. Therefore, I conclude that Appellant's application was not filed in a timely manner and RAM correctly followed its regulations and properly denied Appellant's application for a CHP.

In the appeal, Appellant acknowledged that he elected to not file his application due to error on his part. Appellant had forgotten that ADF&G had changed its reporting format in 2005 and that he had complied with it. It was not until Appellant spoke with an ADF&G representative almost a year after the deadline that he was informed he did have the requisite trips needed during the qualifying period to be eligible for a CHP. However, the reasons articulated above by Appellant are not recognized by the CHLAP regulations as a basis to accept a late application.

CONCLUSIONS OF LAW

Appellant did not file timely file his application for a CHP.

RAM correctly followed the regulations governing the CHLAP when it denied Appellant's application for a CHP.

¹⁹ 50 C.F.R. § 300.67(h)(1); 75 Fed. Reg. 1595 (January 12, 2010).

²⁰ 75 Fed. Reg. 1595 (January 12, 2010).

ORDER

The IAD dated February 15, 2011 is upheld. This decision takes effect thirty days from the date issued, September 19, 2011,²¹ and will become the final agency action for purposes of judicial review, unless a motion for reconsideration is made pursuant to <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>, or the Regional Administrator elects to review this decision pursuant to 50 C.F.R. § 679.43(k) and (o).

Appellant or RAM may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m. Alaska Time, on the tenth day after the date of this Decision, August 29, 2011. A Motion for Reconsideration must be in writing, must allege one or more specific material matters of fact or law that were overlooked or misunderstood by the administrative judge, and must be accompanied by a written statement in support of the motion.

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Eileen G. Jones
Chief Administrative Judge

Date Issued: August 19, 2011

²¹ 50 C.F.R. § 679.43(k) and (o).