

Appellant claims that both of those permits should be transferable permits. On appeal, Appellant does not dispute the angler endorsement on either permit.⁴

Appellant has two vessels: [REDACTED] (VESSEL 1) and the F/V [REDACTED] (VESSEL 2). According to the IAD, Appellant meets the participation requirement for one transferable permit because he took fifteen or more bottomfish logbook fishing trips with VESSEL 1 in one year of the qualifying period and fifteen or more halibut logbook fishing trips with VESSEL 1 in the recent period (2008).⁶

According to the IAD, Appellant met the participation requirement in the qualifying period for a second transferable permit, namely he took fifteen or more bottomfish logbook fishing trips with VESSEL 2 in one year of the qualifying period. According to the IAD, Appellant does not meet the participation requirement in the recent period for a second transferable permit because he did not report any halibut logbook fishing trips with VESSEL 2 in 2008.⁷

Appellant claims that it did report fifteen or more halibut logbook fishing trips by the [REDACTED] in 2008 to ADF&G and therefore its second permit should be transferable.

I determined that the record was insufficient for me to decide Appellant's claim and that an oral hearing was the best way to resolve whether Appellant met the requirements for a second transferable permit.⁸ I held a hearing on October 7, 2011. Appellant and a witness, [REDACTED] testified by telephone. [REDACTED] is a charter vessel captain and operated VESSEL 2 in the years 2006 – 2009 for Appellant. I will refer to [REDACTED] as Captain or Charter Vessel Captain. Counsel was present in person at the hearing.

After the hearing, I added to the record information from the Alaska Department of Fish and Game (ADF&G) on the number of halibut logbook fishing trips that Appellant reported for 2006 and 2009 with VESSEL 1 and VESSEL 2.⁹ Appellant submitted a response and additional documents that were identified at the hearing: Appellant's contract with Captain for 2006, 2007 and 2009 and an original blank page from the 2008 logbook to show how Captain obtained angler signatures.¹⁰ I also added to the record

⁴ Appeal Letter of Appellant (Feb. 10, 2011). Appellant initially stated that the angler endorsement on its permits should be six. Statement by Appellant (received by RAM, Oct. 29, 2010). Appellant withdrew that claim on appeal. Appeal Letter of Appellant (Feb. 10, 2011).

⁵ Appellant's 2004 Logbooks have the vessels with these ADF&G numbers. In Appellant's 2008 logbooks, these vessels are [REDACTED] Vessel [REDACTED], and [REDACTED], Vessel [REDACTED]

⁶ IAD at 1.

⁷ IAD at 2 – 3. If he reported fifteen trips with any vessel (besides VESSEL 1), Appellant meets the requirements in the recent period for a transferable permit.

⁸ Order Scheduling Hearing (Sep. 19, 2011).

⁹ Email from Dora Sigurdsson, Fishery Biologist, Research and Technical Services, ADF&G Sport Fish (Oct. 12, 2011)(2006, 2009 reported trips).

¹⁰ Post-Hearing Submission (Oct. 13, 2011) with the following documents: Statement from Business Owner on the level of 2006 trips by VESSEL 2 (Oct. 13, 2011); 2006, 2007, 2009 contracts by Appellant with Captain; blank page (front and back) of original page from 2008 Logbook. The record already contained Captain's contract for 2008.

written questions and answers that I submitted to ADF&G regarding their data.¹¹ Appellant submitted a response to that information.¹²

I have carefully considered the entire record in this appeal and conclude that the record now contains sufficient information upon which to decide this appeal.¹³ I therefore close the record and issue this decision.

Based on the record, I find that Appellant has shown by a preponderance of evidence in the record that he reported a minimum of fifteen halibut logbook fishing trips from VESSEL 2 in 2008. I therefore conclude that Appellant should receive a second transferable permit with an angler endorsement of five endorsed for use in Area 2C.

ISSUE

Does Appellant meet the participation requirement in the recent period for a second transferable charter halibut permit?

FINDINGS OF FACT

1. Appellant is a limited liability corporation and is managed by Business Owner. Corporation operates out of Sitka, which is in Southeast Alaska.¹⁴
2. Appellant has owned VESSEL 1 since 2004 and has operated it as a charter vessel taking anglers on salmon and halibut charters since 2004.¹⁵
3. Appellant owns VESSEL 2 and has owned it since 1998 and has operated it as a charter vessel taking anglers on salmon and halibut charters since 1998.¹⁶
4. Business Owner also works for [REDACTED] (Business 2) which is a charter fishing business that operates out of Sitka and has between fifteen and nineteen boats in its charter fleet at any given time.¹⁷

¹¹ Email from Dora Sigurdsson (Oct. 19, Oct. 19, Oct. 20, Oct. 2011); Order Adding Documents to Record and Establishing time for Additional Argument or Evidence (Oct. 28, 2011).

¹² Appellant's Comment on Additional Documents (Nov. 4, 2011).

¹³ 50 C.F.R. § 679.43(g)(2).

¹⁴ Application for Charter Halibut Permit (Feb. 15, 2010).

¹⁵ Testimony of Business Owner (Oct. 4, 2010); Official Record List of Trips by Appellant attached to email from Mukhya Khalsa, Computer Specialist, Information Services Division, NMFS Alaska Region (Sep. 9, 2011); State of Alaska, Commercial Fisheries Entry Commission, Public Lookups, <http://www/cfec.state.ak.us/plook/> visited December 1, 2011 (charter vessel data from 1998 to 2004) It is not clear if Business Owner or Appellant Corporation owns these vessels. It is not necessary to resolve that because it is not material to any issue in the appeal.

¹⁶ Testimony of Business Owner (Oct. 7, 2010); Official Record List of Trips by Appellant (Sep. 9, 2011); CFEC Public Lookups, <http://www/cfec.state.ak.us/plook/> visited December 1, 2011.

¹⁷ Testimony of Business Owner (Oct. 7, 2011).

5. Business Owner manages the charter fleet of Business 2.¹⁸
6. At the beginning of each charter season, Business Owner convenes a meeting of the captains for his two vessels and the captains for the vessels of Business 2. At that meeting, Business Owner reviews the changes in ADF&G reporting requirements, distributes logbooks and provides contracts for the captains to sign.¹⁹
7. Charter Vessel Captain was the captain and operator of VESSEL 2 in 2006, 2007, 2008 and 2009.²⁰
8. Charter Vessel Captain's duties included completely filling out logbook pages for trips taken with VESSEL 2 and either submitting them himself or giving them to Business Owner to submit.²¹
9. On May 5, 2008, Business Owner obtained three logbooks for VESSEL 2 from the Sitka Office of the Alaska Department of Fish and Game: Logbooks [REDACTED] [REDACTED] [REDACTED].²²
10. On the evening of May 7, 2008, Business Owner held the 2008 pre-season meeting for charter captains that lasted several hours.²³
11. Charter Vessel Captain attended that meeting, received Logbook [REDACTED] and Logbook [REDACTED] for VESSEL 2 and signed his contract, labeled "Employment Agreement."
12. Appellant's contract with Charter Vessel Captain for 2006, 2007, 2008 and 2009, contained the following provision: "Employee shall be responsible for any and all incurred fines that may result as part of employment and duties."

¹⁸ Testimony of Business Owner (Oct. 7, 2011).

¹⁹ Testimony of Business Owner (Oct. 7, 2011); Testimony of Captain (Oct. 7, 2011).

²⁰ Testimony of Appellant (Oct. 7, 2011); Testimony of Captain (Oct. 7, 2011); Appellant's copy of ADF&G Logbook 83974 for 2008 (all pages signed by Captain); Employment Agreement between Appellant and Captain for 2006, 2007, 2008 and 2009.

²¹ Testimony of Appellant (Oct. 7, 2011); Testimony of Captain (Oct. 7, 2011); Statement of Captain (Aug. 9, 2010); Statement of Business Owner (Aug. 11, 2011).

²² Sign-out sheets for ADF&G Logbooks [REDACTED] (May 5, 2008), attached to email from Dora Sigurdsson, ADF&G (Oct. 19, 2011). Business Owner submitted his copies of Logbook [REDACTED] with fifty pages/fifty trips, and Logbook [REDACTED] with fifty pages/fifty trips, representing a total of 100 reported trips in 2008 (salmon and halibut). Business Owner testified that he had his copies of Logbook [REDACTED] which had three additional trips after August 31, 2008, but did not feel it was necessary to submit proof of three additional trips. I did not ask Business Owner to submit the third logbook and drew no inference adverse to Business Owner from his decision not to submit it.

²³ Testimony of Business Owner (Oct. 7, 2011); Testimony of Captain (Oct. 7, 2011); Employment Agreement between Appellant and Captain (May 7, 2008).

²⁴ Employment Agreement between Appellant and Captain (May 7, 2008).

13. Appellant places great importance on reporting logbook trips to ADF&G because it is a legal requirement and because he does not want to incur fines from not reporting trips.²⁵
14. Business Owner and Charter Vessel Captain each believed that this meant that Charter Vessel Captain would be responsible for any fines imposed as a result of failure to complete logbook reports or submit them the Alaska Department of Fish and Game.²⁶
15. In 2008, Appellant had a consistent procedure for reporting logbook trips to ADF&G from VESSEL 2. Charter Vessel Captain would completely fill out the logbook pages and would either put the logbook pages in the ADF&G drop box every few days between 5:00 and 6:30 p.m., after clients left, or would give several days of trip reports to Business Owner to submit. Business Owner submitted several days of logbook trip reports in the ADF&G drop box at approximately 6:15 in the morning, after Business Owner had delivered clients for charter trips.²⁷
16. The procedure in 2008 was the same procedure for submitting logbooks that Business Owner and Captain used in 2006, 2007 and 2009.²⁸
17. For 2008, Captain and Business Owner each submitted about one-half of the 100 logbook pages in Logbook [REDACTED] and Logbook [REDACTED] for trips by VESSEL 2. Logbook [REDACTED] had fifty trips between May 11, 2008, and July 4, 2008. Logbook [REDACTED] had fifty trips between July 5, 2008, and August 31, 2008.²⁹
18. Between May 11, 2008, and August 31, 2008, Charter Vessel Captain took 100 charter trips with VESSEL 2 and entered at least one of the following pieces of information for 84 of those trips recorded in Logbook [REDACTED] and Logbook [REDACTED]: the number of halibut kept, the number released, the primary statistical area (or stat area) where most bottomfish were caught or the number of boat hours fished for bottomfish on that trip.³⁰
19. The time limit for reporting trips in effect in 2008 was that trips had to be reported weekly in accord with a schedule provided on the inside cover of the logbook.³¹
20. Appellant or Charter Vessel Captain submitted fifteen or more logbook trip reports of trips by VESSEL 2 in 2008 to ADF&G by placing them in the ADF&G drop box

²⁵ Testimony of Business Owner (Oct. 7, 2011).

²⁶ Testimony of Business Owner (Oct. 7, 2011); Testimony of Captain (Oct. 7, 2011).

²⁷ Testimony of Business Owner (Oct. 7, 2011); Testimony of Captain (Oct. 7, 2011).

²⁸ Testimony of Business Owner (Oct. 7, 2011); Testimony of Captain (Oct. 7, 2011).

²⁹ I rely on the weight of evidence in the entire record for this finding.

³⁰ 2008 ADF&G Logbooks [REDACTED].

³¹ 2008 Logbook Instructions at iii available on the NMFS Alaska Region website, Administrative Appeals: http://www.fakr.noaa.gov/appeals/adfg_logbooks/2008.pdf. See Saltwater Logbook Trip Reporting Schedule for 2008 attached to email from Dora Sigurdsson, ADF&G (Oct. 25, 2011). The week was designated as Monday through Sunday. The reports for that week were due by the next Monday.

located in the Court House in Sitka, Alaska within the time limit for reporting the trip in effect at the time of the trip.³²

21. Appellant retained carbon copies of the logbook pages from Logbook [REDACTED] and Logbook [REDACTED]. Appellant submitted copies of his carbon copies on appeal.³³
22. Appellant's copies of the logbook pages from Logbooks [REDACTED] are accurate copies of the logbook reports that Appellant submitted to ADF&G.³⁴
23. For 2004, the trip information on Appellant's retained carbon copies for Logbook [REDACTED] for VESSEL 1 is substantially identical with the trip information in the official record.³⁵
24. For 2004, the trip information on Appellant's retained carbon copies for Logbook [REDACTED] for VESSEL 2 is substantially identical with the trip information in the official record.³⁶
25. For 2008, the trip information on Appellant's retained carbon copies for Logbook [REDACTED] and Logbook [REDACTED] for VESSEL 1 is substantially identical with the information in the official record.³⁷
26. Appellant submitted reported the following number of bottomfish logbook fishing trips in 2004 and 2005 and halibut logbook fishing trips in 2006, 2007 and 2008:³⁸

	2004	2005	2006	2007	2008	2009
VESSEL 1	109	100	85	89	80	76
VESSEL 2	97	80	83	86	?	31.
27. Appellant timely reported to ADF&G at least fifteen halibut logbook fishing trips by VESSEL 2 in 2008.³⁹

³² I rely on the evidence in the entire record for this finding. With respect to the timeliness element of the finding, I particularly rely on the large numbers of trips timely submitted in other years.

³³ Testimony of Business Owner (Oct. 7, 2011).

³⁴ I rely on the evidence in the entire record for this finding.

³⁵ Appellant's copy of ADF&G Logbook [REDACTED] for VESSEL 1 for 2004; Official Record List of Trips by VESSEL 1 for 2004 (Sep. 9, 2011). This Office compared the two sources. It is possible they were exactly identical but our examination of the two sources was not sufficient to make that finding.

³⁶ Appellant's copy of ADF&G Logbook [REDACTED] for VESSEL 1 for 2004; Official Record List of Trips by VESSEL 1 for 2004 (Sep. 9, 2011).

³⁷ ADF&G Logbook [REDACTED] for VESSEL 1 for 2008; Official Record List of Trips by VESSEL 2..

³⁸ Official Record Summary of Trips by Appellant (Jan. 26, 2010); Email from Dora Sigurdsson, ADF&G Sport Fish (Oct. 12, 2011). With VESSEL 1, Appellant reported 108 total trips in 2006 and 83 total trips in 2009. With VESSEL 2, Appellant reported 100 total trips in 2006 and 31 total trips in 2009.

³⁹ I rely on the evidence in the entire record for this finding.

PRINCIPLES OF LAW

In March 2007, the North Pacific Fishery Management Council recommended that the Secretary of Commerce adopt a program of limited entry for the charter halibut fisheries in IPHC Areas 2C and 3A.⁴⁰ In January 2010, the Secretary of Commerce adopted the regulations implementing the Charter Halibut Limited Access Program (CHLAP) pursuant to section 773c of The Halibut Act.⁴¹ These regulations are found at 50 C.F.R. §§ 300.61, 300.66, and 300.67. NMFS must follow these regulations in issuing charter halibut permits. The following is a description of the chief features of the CHLAP regulations that are relevant to this appeal.

To receive a charter halibut permit, an applicant must be a person to whom ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that met the minimum participation requirements for a permit. To receive credit for a trip, the trip must have been reported it under the applicant's ADF&G Business Owner License.⁴²

An applicant must prove participation through logbook fishing trips in two periods: a qualifying period, which is the sport fishing season for halibut in 2004 and 2005, and a recent participation period, which is the sport fishing season for halibut in 2008.⁴³

The relevant unit of participation is a logbook fishing trip. A logbook fishing trip is either a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.⁴⁴

An applicant must prove "bottomfish logbook fishing trips" in the qualifying period (2004, 2005) and "halibut logbook fishing trips" in the recent period (2008).⁴⁵ A bottomfish logbook fishing trip is a logbook fishing trip that was reported with any one of three pieces of information: the statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.⁴⁶

A halibut logbook fishing trip is a logbook fishing trip that was reported with any one of four pieces of information: the number of halibut kept, the number of halibut released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.⁴⁷

⁴⁰ Proposed Rule, 74 Fed. Reg. 18,178, 18,182 (Apr. 21, 2009).

⁴¹ Final Rule, 75 Fed. Reg. 554, 554 (Jan. 5, 2010).

⁴² 50 C.F.R. § 300.67(b)(1)(ii).

⁴³ 50 C.F.R. § 300.67(f)(6)-(7).

⁴⁴ 50 C.F.R. § 300.67(f)(4). The requirement of timely reporting is part of the definition of logbook fishing trips, bottomfish logbook fishing trips and halibut logbook fishing trips. When I say that Appellant took a bottomfish or halibut logbook fishing trip, I mean that trip was timely reported.

⁴⁵ 50 C.F.R. § 300.67(b)(1)(ii); 50 C.F.R. § 300.67(d)(1).

⁴⁶ 50 C.F.R. § 300.67(f)(2).

⁴⁷ 50 C.F.R. § 300.67(f)(3).

An applicant must prove different levels of participation for a non-transferable permit and for a transferable permit. To receive a non-transferable charter halibut permit, an applicant must have reported a minimum of five bottomfish logbook fishing trips in one year in the qualifying period (2004 or 2005), and a minimum of five halibut logbook fishing trips in the recent participation period (2008).⁴⁸

To receive a transferable charter halibut permit, an applicant must have reported a minimum of fifteen bottomfish logbook fishing trips with the same vessel in one year in the qualifying period (2004 or 2005), and fifteen halibut logbook fishing trips with the same vessel in the recent participation period (2008). The trips must have been reported under the applicant's ADF&G Business Owner License for that year.⁴⁹

To receive a second transferable charter halibut permit, an applicant must meet the same requirements with a different vessel.⁵⁰

ANALYSIS

Does Appellant establish by a preponderance of evidence that he reported fifteen or more halibut logbook fishing trips to ADF&G in 2008 with VESSEL 2?

I have found that Appellant showed by a preponderance of evidence in the record that it reported at least fifteen halibut logbook fishing trips from VESSEL 2 to ADF&G in 2008 within the time limits for reporting the trip in effect at the time of the trip. Since this is the crucial factual finding in this appeal, I will explain how I evaluated the evidence.

The evidence tending to show that Appellant did not report any trips by VESSEL 2 in 2008 is a written statement from Dora Sigurdsson, the key ADF&G staff person who implements the State logbook program, that the Sitka Office of ADF&G carefully logs in the reports it receives in the drop box, the Office checked its records and did not find a record of reports from VESSEL 2 for 2008. Ms. Sigurdsson provided a copy of a log sheet.⁵¹ A presumption of regularity attaches to acts performed by government officials. They are presumed to carry out their official duties correctly.⁵²

An applicant may overcome the presumption, and the government's statement that it did not receive the reports, if the applicant shows, by a preponderance of evidence in the record for the appeal, that it is more likely than not that it did report the required number of trips by the same vessel. I conclude that the applicant has met that burden.

⁴⁸ 50 C.F.R. § 300.67(b)(1)(ii)(A)-(B).

⁴⁹ 50 C.F.R. § 300.67(d)(1).

⁵⁰ 50 C.F.R. § 300.67(d)(2).

⁵¹ Email from Dora Sigurdsson, Fishery Biology, Research and Technical Services, ADF&G Sport Fish (Oct. 20, 2011). Ms. Sigurdsson provided a sample page of the logbook and a list of dates received and submitted for Appellant's logbook pages for VESSEL 2 in 2004, 2005 and 2007.

⁵² "Administrative law has adopted a presumption of regularity for official decisions." C. Koch, Jr., *Administrative Law and Practice* § 1.20 at [12] at 42 (3d. ed. 2010).

The evidence tending to show that Appellant did report fifteen or more trips by VESSEL 2 in 2008 is as follows: Appellant has owned VESSEL 2 since 1998, has used it as a charter vessel since 1998 and had every incentive to use it in 2008; Appellant had copies of fifty pages from Logbook [REDACTED] and fifty pages from Logbook [REDACTED] which are completely filled out with respect to each trip; Business Owner provided consistent written statements and testimony as to how he and charter captain each submitted approximately half of the logbook pages for VESSEL 2; Captain's written statement and testimony that corroborated Business Owner's statements and testimony; Captain's testimony that ADF&G staff conducted regular "creel" surveys in 2008 of the vessel's catch and frequently checked the logbook, which provided an additional incentive to fill out the logbooks;⁵³ Business Owner manages his own two vessels, VESSEL 1 and VESSEL 2, and has a contract to manage fifteen to nineteen vessels for Business 2; Business Owner requires all the charter captains working for him and for Business 2 to sign a written contract specifying the terms and conditions of their employment; the required contract includes that the charter captains are responsible for any fines that may result from their employment; Appellant holds a captain's meeting at the beginning of each season to review regulation and reporting changes for the year; and the high number of trips that Appellant timely reported in 2004, 2005, 2006, 2007, 2008 and 2009 by VESSEL 1 and the high number of trips that Appellant timely reported in 2004, 2005, 2006, 2007 and 2009 by VESSEL 2.

Business Owner and Charter Vessel Captain testified to a standard procedure of sharing responsibility for turning in logbooks for VESSEL 2. Business Owner estimated that they each turn in about half of the logbooks for VESSEL 2. If Charter Vessel Captain turns in the logbooks, he does it between 5 and 6:30 in the evening, after his clients have left his boat at 4:30 and before he goes home. If Charter Vessel Captain does not do that, he gives the logbook pages to Business Owner when Business Owner brings clients and lunches for the day's trips at 6:00 a.m. in the morning. Business Owner testified that about two to three times a week, at approximately 6:15 a.m., as he is returning from dropping off the day's clients, he will stop at the ADF&G drop box located next to the Sitka Court House and deposit the trip reports into the ADF&G drop box. He testified that he does not bring the reports when the ADF&G office is open because he is not in town when the office is open.

I found Business Owner's testimony credible that he places a high priority on ensuring that the captains working for him and for Business 2 comply with the reporting requirements. Business Owner testified:

Attorney: Do you have an incentive to turn in your logbooks properly?

⁵³ Testimony of Captain (Oct. 7, 2011). The ADF&G website confirms that it conducts "creel" surveys. A creel is the wicker basket that fishermen used to put their catch in. Nowadays, it is more likely a cooler but the old name is still used. ADF&G website, "Creel Surveys Help Manage Sport Fish, A Clipboard and a Smile: Talking with Anglers," visited Nov. 29, 2011, http://www.adfg.alaska.gov/index.cfm?adfg=wildlifeneews.view_article&articles_id=164&issue_id=29,

Business Owner: Absolutely. There are fines that you can incur with not turning in logbook sheets. I have zero infractions on any logbook or vessel that I have owned or currently own.

Attorney: Do you . . . I think you talked about being a fleet manager for [Business 2]. Do you take that responsibility seriously?

Business Owner: Absolutely seriously. It's data that's required and, you know, it's a responsibility for other vessels. And it's a requirement of law. So it's taken very seriously. My two captains, that's part of their contract. They sign a contract in a sense that there's a portion that they are responsible for fines that they would incur as well. So there's a definite downside as far as that goes for them as well.⁵⁴

Business Owner holds a meeting at the beginning of every season where he goes over regulation changes and the captains sign their contracts. Business Owner and Charter Vessel Captain's testimony regarding the pre-season meeting was corroborated by the captain's signed contract, dated May 7, 2008. Charter Vessel Captain attended the meeting at the beginning of the 2008 season and received two logbooks for VESSEL 2.

Business Owner's testimony was consistent with three prior written statements.⁵⁵ Business Owner wrote:

All logbook sheets for the year (2008) were filled out each day by [REDACTED] with the client name, client signature, and license number. At some point the burden of proof has to stop with us – we did everything required. There is NO gain or upside to not turning them in, only downside. It makes absolutely no sense to fill out the logbook sheets and not turn them in. [Captain] signs a contract each season with us, that he is responsible for any fines incurred regarding the season including logbook fines, which makes [Captain] extra careful to abide by the law. We have a crystal clear record of EVERY year with logbooks⁵⁶

Charter Vessel Captain's testimony was consistent with his prior written statement, namely that he and Business Owner each turned in about half the logbook pages for VESSEL 2 for the four years he operated VESSEL 2. Charter Vessel Captain stated: "[I] was the captain of [VESSEL 2] for the years of 2006, 2007, 2008, and 2009. Each season, [Business Owner] and I shared the duty of turning in the logbook sheets to the local Alaska Department of Fish and Game drop off box located outside of the Sitka City building on Lake St."⁵⁷ Charter Vessel Captain stated: "For the season of 2008, there was no difference in the way logbook sheets were turned in for [VESSEL 2], both

⁵⁴ Testimony of Business Owner (Oct. 7, 2011) 28 min.

⁵⁵ Letter from Business Owner (received Aug. 11, 2010); Statement of Business Owner (Aug. 11, 2010); Letter from Business Owner in connection with appeal (Feb. 10, 2011).

⁵⁶ Letter from Business Owner (received Aug. 11, 2010).

⁵⁷ Statement of Captain (Aug. 9, 2010).

[Business Owner] and I turned in a total of 100 logbook sheets at the same ADF&G drop off box in Sitka as logbook sheets became due each week throughout the 2008 season. In the years I ran [VESSEL 2], there have not been any logbook violations.”⁵⁸

Appellant has a consistent history of reporting trips from VESSEL 1 and VESSEL 2. ADF&G data shows the following reported bottomfish logbook fishing trips in 2004 and 2005 and halibut logbook fishing trips in 2006, 2007 and 2009:⁵⁹

	2004	2005	2006	2007	2008	2009
VESSEL 1	109	100	85	89	80	76
VESSEL 2	97	80	83	86	?	31

Appellant explained the lower number of trips by VESSEL 2 in 2009: “First, 2009 was a recession year and business was down across the board for all tourism. Second, the skipper of [VESSEL 2] in 2009 . . . also guided trips on other boats working for [Business 2], and did not make as many trips as usual on [VESSEL 2] that year.”⁶⁰

The record contains no reason that Business Owner and Captain would not report trips by VESSEL 2 in 2008 as they had done in 2006, 2007 and 2009. It is hard to imagine how or why Business Owner and Captain would have reported **no** trips with VESSEL 2 in 2008.

I found Business Owner’s testimony credible. As I mentioned, his oral testimony was consistent with his three prior written statements and was consistent with Captain’s testimony and written statement.⁶¹ Business Owner answered the questions. He did not equivocate. Business Owner gave answers that were reasonably detailed. For example, when asked about his practice of turning in logbooks for captains, he stated that “there are five or so captains that give me logbooks.” He also was not willing to offer an opinion unless he was fairly certain. He did not remember whether he had picked up both logbooks for VESSEL 2 from ADF&G at the same time, “I wouldn’t want to, under oath, say something that I am not absolutely certain of but, just based on the numerical part of it [the consecutive numbers on the logbooks], that I may have picked up both at the same time.”⁶² Charter Vessel Captain did remember that he received both logbooks for VESSEL 2 at the pre-season meeting in 2008.⁶³

⁵⁸ Statement of Captain (Aug. 9, 2010).

⁵⁹ Official Record Summary of Trips by Appellant (Jan. 26, 2010); Email from Dora Sigurdsson, ADF&G Sport Fish (Oct. 12, 2011). With VESSEL 1, Appellant reported 108 total trips in 2006 and 83 total trips in 2009. With VESSEL 2, Appellant reported 100 total trips in 2006 and 31 total trips in 2009.

⁶⁰ Supplemental (written) testimony of Business Owner (Oct. 13, 2011).

⁶¹ Testimony of Business Owner (Oct. 7, 2011); Letter from Business Owner (received Aug. 11, 2010); Statement of Business Owner (Aug. 11, 2010); Letter from Business Owner (Feb. 10, 2011).

⁶² Testimony of Business Owner (Oct. 7, 2011) 45 min.

⁶³ Testimony of Captain (Oct. 7, 2011) 51 min.

I also found Charter Vessel Captain's testimony credible. He, too, was consistent in his oral testimony and written statement.⁶⁴ He also testified with specificity and without evasiveness. He also gave reasonable details. For example, he stated that the captain's meeting occurred in the evening and lasted a few hours. Charter Vessel Captain's testimony was internally consistent. For example, he explained why he would not have deposited logbook pages in the morning – he would be busy getting the boat ready – but would sometimes deposit them in the evening – when he had time returning home at the end of the day.

In the record, I have consistent, credible, sworn testimony from Business Owner and Captain at a hearing where I was able to listen to the testimony and ask questions of both witnesses. The statement from the ADF&G staff person was not subject to elaboration at a hearing and was not subject to cross-examination by Appellant.

Given the copies of the logbook reports, Appellant's and Charter Vessel Captain's consistent, credible written statements and sworn testimony that they submitted logbook trip reports for VESSEL 2, given the incentives they had to use VESSEL 2, fill out logbooks for VESSEL 2 and submit the logbook reports, given that Appellant used the same system to report trips from VESSEL 2 in 2008 that it used to report high numbers of trips from VESSEL 2 in 2006 and 2007 and 2009, I reaffirm the finding that Appellant has shown by a preponderance of evidence in the record that it reported fifteen or more trips by VESSEL 2 in 2008. Appellant therefore meets the participation requirement for a second transferable permit.

CONCLUSIONS OF LAW

1. Appellant meets the participation requirement in the recent period to receive a second transferable permit.
2. Appellant should receive two transferable permits for use in Area 2C, each with an angler endorsement of five.

ORDER

The IAD that is the subject of this appeal is VACATED. RAM is directed to issue two transferable permits, each with an endorsement of five anglers, for use in IPHC Regulatory Area 2C, to Appellant. This decision takes effect on January 30, 2012, unless by that date the Regional Administrator reverses, remands, or modifies this decision pursuant to 50 C.F.R. § 679.43(k), (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 Standard Time on January 9, 2012, the tenth day after the date of this Decision. A Motion for Reconsideration must be in writing,

⁶⁴ Testimony of Captain (Oct. 7, 2011); Statement of Captain (Aug. 9, 2010).

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 of points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the decision pending a ruling on the motion or the issuance of a Decision on Reconsideration.



Mary Alice McKeen
Administrative Judge

Date issued: December 30, 2011