

On October 26, 2010, RAM issued the IAD at issue in this appeal.⁵ In the IAD, RAM denied Appellant's application for a CHP. RAM reasoned that the Official Record, which RAM uses to determine applicants eligibility, showed Appellant did not have a business owner license issued by ADF&G for 2004, 2005 or 2008.⁶ RAM also explained that Appellant had not supplied information that established that he or his businesses had reported the minimum logbook fishing trips in 2004, 2005, or 2008.⁷

RAM also explained the CQE program and eligibility for CCHPs:

[T]he regulations governing the [CHLAP] at 50 C.F.R. 300.67(k) do authorize the issuance of [CCHPs] to eligible communities....Those permits may be applied for by the...CQE...The CQE may then authorize the use of its [CCHPs] by independent charter operators as it deems proper....

The community of...Bay is a community eligible to form a CQE and apply for up to seven...[CCHPs]...The community of...Bay has already formed a CQE....This is the only entity that may apply for and receive CCHPs....Once permits are applied for and received, [the community may] determine who may use those permits on behalf of the community.⁸

On December 28, 2010, Appellant timely appealed the IAD to OAA.⁹ With the appeal, Appellant included email messages he sent to a local Bay Community representative. In those messages, Appellant requested that he be considered for a lease of Bay's CCHPs.¹⁰

On March 3, 2011, NAO acknowledged receipt of the Appellant's appeal and provided Appellant until April 4, 2011 to supplement the record.¹¹ In response, Appellant has provided NAO with additional email messages and a copy of his appeal letter dated December 25, 2010.¹² In one of the email messages, a Bay Community representative informed Appellant that the community would not be leasing its permits to him.¹³ NAO added to the case record the materials submitted by Appellant.

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

⁵ Original File Tab, IAD.

⁶ Original File Tab, IAD page 2.

⁷ Original File Tab, IAD page 2.

⁸ Original File Tab, IAD pages 3-4.

⁹ Pleadings File Tab, Appellant's appeal letter dated December 25, 2010.

¹⁰ Pleadings File Tab, Email sent from Appellant to an official of the Bay Community

¹¹ Appeals Correspondence Tab, NAO letter dated March 3, 2011.

¹² Pleadings File Tab.

¹³ Pleadings File Tab, Email sent from the Bay Community Official dated March 17, 2011.

decision based on the case record. Accordingly, I close the record and issue this decision.¹⁴

ISSUES

At issue in this appeal is whether Appellant is eligible for a CHP. To resolve this issue, I must evaluate the following:

Did Appellant establish by a preponderance of the evidence that he was licensed to do business by ADF&G during 2004 or 2005 and 2008?

If the answer to that question is “no,” I must uphold the IAD and conclude that Appellant is not eligible for a CHP.

FINDINGS OF FACT

1. In 2004, 2005 and 2008, Appellant, including his businesses identified in the IAD, did not have a Business Owner License issued by ADF&G.¹⁵
2. In 2004, 2005, and 2008, Appellant, including his businesses identified in the IAD, reported no bottomfish logbook fishing trips to ADF&G.¹⁶
3. On or about January 14, 2010, Appellant inquired to NOAA about the CQE program.¹⁷
4. On January 15, 2010, Appellant forwarded the information provided by NOAA to a representative of Bay Community.¹⁸
5. On January 15, 2010, Appellant expressed his interest to a Bay Community representative about possibly leasing the community's permits.¹⁹
6. On April 5, 2010, Appellant filed an application with NMFS for a CHP.²⁰
7. On October 26, 2010, RAM denied Appellant's application.
8. On December 25, 2010, Appellant filed a timely appeal.²¹

¹⁴ See 50 C.F.R. § 679.43(g) and (k).

¹⁵ Appellant's letter attached to Application. I also note the absence of affirmative proof of said licenses in the record.

¹⁶ Original File, Application, Page 3.

¹⁷ Pleadings Tab, Email to Appellant dated January 14, 2010.

¹⁸ Pleadings Tab, Email from Appellant dated January 15, 2010.

¹⁹ Pleadings Tab, Email from Appellant dated January 15, 2010.

²⁰ Original File Tab, Application, Page 1-3.

²¹ Pleadings Tab, Appellant's letter submitted to RAM received on January 31, 2011.

9. On March 17, 2011, a representative from Bay Community declined Appellant's offer to lease its permits.²²

PRINCIPLES OF LAW

In general, NMFS is only authorized to issue a CHP to an individual or entity that has been issued an ADF&G Business Owner License. These licenses can include business registration, sport fishing business owner license, sport fish business license, or ADF&G business license. With this license one is then authorized to take qualifying logbook fishing trips.²³

To establish one's history of bottomfish logbook fishing trips, one must record qualifying trips in a state-issued logbook. ADF&G issues logbooks to those who hold an ADF&G Business Owner License.²⁴

To be eligible for a permit, an applicant must also have reported a minimum of five bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and must have reported five or more halibut logbook fishing trips during the 2008 recent participation period.²⁵ A "logbook fishing trip" means 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.²⁶

A "halibut logbook fishing trip" means a logbook fishing trip in the recent participation period that was reported to the State of Alaska in a Saltwater Charter Logbook within the time limit for reporting the trip in effect at the time of the trip with one of the following pieces of information: The number of halibut that was kept, the number of halibut that was released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.²⁷

CQEs that are identified in the CHLAP regulations may apply and receive one or more CCHPs.²⁸ These permits may only be applied for by the community or its representative.²⁹

Appeals may be filed by a person "whose interest is directly and adversely affected by an" IAD.³⁰ In his appeal, an appellant must include "a concise statement of the reasons

²² Pleadings Tab, Email to Appellant dated March 17, 2011.

²³ See 50 C.F.R. § 300.67(b)(1)(ii) and (3).

²⁴ 50 C.F.R. § 300.67(b)(1)(ii)

²⁵ 50 C.F.R. § 300.67 (b)(1)(i) and (ii)(A) and (B); 50 C.F.R. § 300.67 (f)(6) and (7).

²⁶ 50 C.F.R. § 300.67(f)(4).

²⁷ 50 C.F.R. § 300.67(f)(3).

²⁸ 50 C.F.R. § 300.67(k)(2) and (6).

²⁹ 50 C.F.R. § 300.67(k)(1),(2) and (6).

³⁰ 50 C.F.R. § 679.43(b).

the [IAD] has a direct and adverse effect on the applicant and should be reversed or modified.”³¹

ANALYSIS

The issue before me is whether Appellant has shown by a preponderance of the evidence that he held an ADF&G Business License for 2004 or 2005 and 2008.³² Without said license, Appellant could not be issued a logbook to record qualifying fishing trips.

Appellant in this case concedes that he just recently started his business and did not have an ADF&G issued license in 2004, 2005, or 2008. Therefore, Appellant was not eligible for a CHP, and RAM did not err in the IAD when it notified Appellant his application for a CHP was denied.

In reaching my decision in this case, I have carefully reviewed the entire file, including Appellant’s appeal documentation. In support of his request for a CHP, Appellant provided documentation showing his repeated requests made to the Bay Community to lease their permits. Appellant also submitted copies of his statements regarding his perceptions about the fairness and effectiveness of the CQE program. However, the issue before me is whether Appellant is eligible for a CHP. In the IAD which forms the basis of the issue on appeal, RAM did not deny Appellant a CCHP, but a CHP.

I also note that CCHPs can only be requested by a representative of a community.³³ In this matter, Appellant has not shown that he is requesting the permit in such a capacity. Further, CQEs who receive CCHPs have discretion in granting the use of their permits. The CHLAP regulations³⁴ and the procedural regulations that govern this appeal,³⁵ do not state that on appeal an appellant can challenge a decision made by a CQE recipient of a CCHP.

CONCLUSIONS OF LAW

Pursuant to CHLAP regulations, Appellant has not shown that he held an ADF &G business license during any of the years 2004, 2005, and 2008 or that during those years he reported either halibut or bottomfish logbook fishing trips to ADF&G.

An individual in his individual capacity is not eligible to apply for a CCHP. Only CQEs are eligible to apply to NMFS for a CCHP.

³¹ 50 C.F.R. § 679.43(f).

³² I note that on appeal Appellant does not raise the issue of unavoidable circumstances as a basis for alleging error in the IAD. I therefore do not address that issue in this decision.

³³ 50 C.F.R. § 300.67(k).

³⁴ 50 C.F.R § 300.67(k).

³⁵ 50 C.F.R. § 679.43(b) and (f).

As a result, the IAD is consistent with CHLAP regulations and Appellant is not eligible for a CHP.

ORDER

The IAD dated October 26, 2010 is upheld. This decision takes effect thirty days from the date issued, August 22, 2011,³⁶ 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 1, 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: July 22, 2011

³⁶ 50 C.F.R. § 679.43(k) and (o).