



Additionally, the Final Rule supports the sections of the Decision in which the preamble to the Proposed Rule for the CHLAP regulations is referenced. The sections of the Decision referencing the preamble to the Proposed Rule are associated with Appellant's arguments on appeal that ADF&G does not issue "ADF&G Business Owner Licenses,"<sup>4</sup> and that ADG&G logbook data was wrongfully relied on in implementing CHLAP regulations.<sup>5</sup>

In reference to Appellant's argument on appeal that ADF&G does not issue ADF&G Business Owner Licenses, the Final Rule states "the official record will include information from ADF&G on the persons that obtained ADF&G Business Owner Licenses in the qualifying period and the recent participation period; the logbook fishing trips in those years that met the State of Alaska's legal requirements; the Business Owner License that authorized each logbook fishing trip; and the vessel that made each logbook fishing trip."<sup>6</sup>

In reference to Appellant's argument on appeal that ADG&G logbook data was wrongfully relied on in implementing CHLAP regulations, the Final Rule states "[t]here are several reasons for relying only on the ADF&G charter vessel logbook database. First, ADF&G has regulated saltwater charter fishing in the State of Alaska through registrations, licenses, and logbooks since 1998. These requirements apply to all charter fishing, including vessels targeting halibut. Second, ADF&G supplied aggregated charter vessel logbook data to the Council to assist it in its analysis of past participation in the charter halibut fishery in Areas 2C and 3A. Third, the Council relied on these data in part to make its decision to recommend limiting entry into this fishery and NMFS, in turn, has relied on the Council's Analysis of alternatives and on subsequent ADF&G charter vessel logbook data to approve this action."<sup>7</sup>

Appellant also argues in his Motion that the Decision creates bad public policy because the CHLAP regulations do not make the Alaska Department of Fish and Game (ADF&G) the exclusive source and maintainer of the Official Record. As explained in the Decision, "The [North Pacific Fishery Management] Council chose to rely on the fishing trip data in ADF&G Saltwater Charter Logbooks as the best available source of information on participation in the charter fishery."<sup>8,9</sup>

Appellant also argues in his Motion that the Decision was unfair and violated due process requirements because RAM used law enforcement personnel to conduct a civil investigation on his Charter Halibut Permit application. As stated in the Decision, the

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<sup>4</sup> Decision issued, page 4.

<sup>5</sup> Decision issued, page 7.

<sup>6</sup> 75 Fed. Reg. 556 (Jan. 5, 2010).

<sup>7</sup> 75 Fed. Reg. 556 (Jan. 5, 2010).

<sup>8</sup> 75 Fed. Reg. 590 (Jan. 5, 2010). The Council is authorized to develop regulations under the Halibut Act § 733c(c).

<sup>9</sup> Decision issued, page 5-6.

scope of the appeal does not extend to resolving such an issue and NAO has no jurisdiction over law enforcement proceedings.<sup>10</sup>

Appellant also argues in his Motion that a hearing should have been held in his case to allow him to present factual arguments. Appellant had multiple opportunities to submit evidence in support of his appeal. On December 17, 2010, Appellant's appeal was received.<sup>11</sup> On February 16, 2011, NAO sent Appellant a letter notifying him that the office had received his appeal and requesting that any additional documentation or information in support of his appeal be submitted to NAO by March 18, 2011.<sup>12</sup> Appellant submitted additional documents and evidence that were added to the case record. As noted in the Decision, because Appellant's record contained sufficient information on which to reach final judgment, a hearing was not needed in his case.<sup>13</sup> Further, a hearing may only be ordered if Appellant demonstrated a genuine and substantial issue of adjudicative fact for resolution.<sup>14</sup> Appellant did not articulate a material issue of fact, which if he proved, would help him prevail in his appeal. Although Appellant did raise legal and policy issues in his appeal, a hearing may not be ordered on issues of policy or law.<sup>15</sup>

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Appellant did not meet the minimum participation requirements for the qualifying period (2004 or 2005).

The new effective date of the Decision is December 1, 2011 subject to the Regional Administrator's review.<sup>16</sup>



Steven Goodman  
Administrative Judge

Date Issued: November 1, 2011

<sup>10</sup> Decision issued, page 8.

<sup>11</sup> Pleadings Tab, Appellant's Letter of Appeal dated Dec. 17, 2010 (received by OAA on Dec. 21, 2010).

<sup>12</sup> Appeals Correspondence Tab, Letter from NAO to Appellant dated Feb. 16, 2011.

<sup>13</sup> Decision issued, page 2.

<sup>14</sup> 50 CFR § 679.43(g)(3)(i)

<sup>15</sup> 50 CFR § 679.43(g)(3)(i)

<sup>16</sup> <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).