

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of

[REDACTED]

Appellant

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Appeal No. 11-0065

DECISION

STATEMENT OF THE CASE

The National Appeals Office (NAO) is a division within the National Marine Fisheries Service (NMFS), Office of Management and Budget. NAO operates out of NOAA's headquarters in Silver Spring, Maryland and maintains an office in NMFS's Alaska Regional office. NAO is the successor to the Office of Administrative Appeals (OAA), Alaska Region, and is charged with processing appeals that are on file with OAA. This decision is being issued by the administrative judge to whom this appeal was assigned for adjudication.¹

[REDACTED] doing business as [REDACTED] and [REDACTED] (Appellant), filed the appeal under review. Appellant is appealing an Initial Administrative Determination (IAD) issued by NMFS's Restricted Access Management Program (RAM). In the IAD, RAM denied Appellant's application for a Charter Halibut Permit (permit or CHP).

On March 25, 2010, Appellant applied for a CHP pursuant to the Charter Halibut Limited Access Program (CHLAP).² On April 1, 2010, Appellant submitted a revised application for a CHP.³ Included with his revised application, Appellant included: a copy of the Purchase Agreement between [REDACTED] and [REDACTED]; a copy of the Articles of Dissolution for [REDACTED]; and a letter from Attorney [REDACTED] claiming that [REDACTED] is a successor-in-interest to [REDACTED].

In response to Appellant's application, on August 6, 2010, RAM sent Appellant a Notice of Opportunity to Submit Evidence (Notice).⁵ In the Notice, RAM explained that for

¹ 50 C.F.R. § 679.43.
² Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A, signed March 25, 2010, received March 25, 2010.
³ Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A, signed April 1, 2010, received April 2, 2010.
⁴ Original File Tab, type-written letter from Appellant, dated April 1, 2010, received April 1, 2010.
⁵ Original File Tab, Notice of Opportunity to Submit Evidence.

Appellant's selected qualifying year, 2004, Appellant was not the owner of [REDACTED] the entity to which the Alaska Department of Fish and Game (ADF&G) issued an ADF&G Business Owner License authorizing logbook fishing trips. Moreover, RAM indicated Appellant had not demonstrated how he was the successor-in-interest to [REDACTED]. Finally, RAM explained Appellant had not explained how [REDACTED], made any qualifying logbook fishing trips in 2004, 2005 or 2008. RAM set a September 7, 2010, deadline for Appellant to submit additional evidence in support of his claim.

On September 3, 2010, Appellant responded to the Notice.⁶ Appellant indicated he owned [REDACTED] and that entity was a successor-in-interest to [REDACTED]. Appellant provided numerous documents in support of his contention.

On January 19, 2011, RAM sent Appellant the IAD at issue in this case.⁷ In its IAD, RAM denied Appellant a permit because he lacked the requisite logbook trips as explained in the Notice. RAM stated Appellant also did not qualify for a permit as a successor-in-interest. RAM noted Appellant had the right to appeal the IAD to OAA and that any appeal must be received by March 22, 2011.

On March 22, 2011, Appellant appealed the IAD.⁸ In his appeal, Appellant explained why he believed the IAD was incorrect. On April 21, 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 May 23, 2011.⁹ NAO did not receive any additional material from Appellant supporting his claim.

I have reviewed Appellant's appeal and the case record, and I have determined that the record contains sufficient information on which to reach final judgment. Accordingly, I close the record and issue this decision without ordering a hearing.¹⁰

ISSUES

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

- a. Did Appellant prove by a preponderance of the evidence that he met the minimum participation requirements for a CHP?
- b. If the answer to Question a. is "no," I must determine if Appellant established by a preponderance of the evidence that he is a successor-in-interest making him eligible to receive a CHP?

⁶ Original File Tab, type-written letter from Appellant, dated September 2, 2010, received September 3, 2010.

⁷ Original File Tab, IAD dated January 19, 2011.

⁸ Pleadings Tab, March 2011 Response Letter, dated March 1, 2011, received March 22, 2011.

⁹ Appeals Correspondence Tab, Letter from NAO to Appellant dated April 21, 2011.

¹⁰ 50 C.F.R. § 679.43 (g)(2), (k).

- c. If the answer to Question b is “no,” I must conclude Appellant is not eligible for a CHP and therefore must uphold the IAD.

FINDINGS OF FACT

1. [REDACTED] a partnership, was owned by [REDACTED] (Prior Owners).
2. In 2004, [REDACTED] timely and properly reported fifty-six bottomfish logbook fishing trips to ADF&G.
3. In 2005, [REDACTED] timely and properly reported thirty bottomfish logbook fishing trips to ADF&G.
4. In 2008, [REDACTED] reported zero halibut logbook fishing trips to ADF&G.¹⁴
5. In 2005, Prior Owners divorced. As part of Prior Owners' divorce, [REDACTED] transferred ownership of [REDACTED] to [REDACTED].¹⁵
6. In 2007, [REDACTED] transferred all of [REDACTED] assets to [REDACTED].¹⁶
7. In 2004, 2005, and 2008, [REDACTED] reported no logbook fishing trips to ADF&G.¹⁷
8. In November of 2007, [REDACTED] sold its assets to [REDACTED].¹⁸
9. [REDACTED], reported zero logbook fishing trips in both 2004 and 2005 to ADF&G.
10. [REDACTED], timely and properly reported twenty-six halibut logbook fishing trips in 2008 to ADF&G.²⁰

¹¹ Original File Tab, Affidavit of [REDACTED] dated September 2, 2010, received September 3, 2010.

¹² Original File Tab, printed summary.

¹³ Original File Tab, printed summary.

¹⁴ Original File Tab, printed summary.

¹⁵ Original File Tab, Affidavit of [REDACTED] dated September 2, 2010, received September 3, 2010.

¹⁶ Original File Tab, Affidavit of [REDACTED] dated September 2, 2010, received September 3, 2010.

¹⁷ Original File Tab, printed summary

¹⁸ Original File Tab, Purchase and Sale Agreement between [REDACTED] and [REDACTED] received April 21, 2010.

¹⁹ Original File Tab, printed summary.

²⁰ Original File Tab, printed summary.

PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS will issue a CHP if an applicant meets certain requirements. If an Appellant seeks a permit because he is a successor-in-interest, among the requirements for establishing his claim is proof that the predecessor reported five or more bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and reported five or more halibut logbook fishing trips during the recent participation period, 2008.²¹

Minimum participation requirements to qualify for a charter halibut permit are as follows: an applicant must have reported five or more bottomfish logbook fishing trips during one year of the qualifying period, namely 2004 or 2005, and must have reported five or more halibut logbook fishing trips during the recent participation period, namely 2008.²²

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.²³

A “bottomfish logbook fishing trip” means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following 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.²⁴

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.²⁵

The regulations governing the CHLAP provide that NMFS is only authorized to issue a CHP to the individual or entity to which ADF&G issued the ADF&G Business Owner License.²⁶ This license authorized the logbook fishing trips that are used to meet the minimum participation requirements to qualify for a CHP.²⁷

²¹ 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B)(iii); 50 C.F.R. § 300.67(f)(6) and (7); and 50 C.F.R. § 300.67(d)(1).

²² 50 C.F.R. § 300.67(b)(1)(ii)(A)-(B), (f)(6)-(7).

²³ 50 C.F.R. § 300.67(f)(4).

²⁴ 50 C.F.R. § 300.67(f)(2).

²⁵ 50 C.F.R. § 300.67(f)(3).

²⁶ An ADF&G Business Owner License includes a business registration, a sport fish business owner license, a sport fish business license, and an ADF&G business license. 50 C.F.R. § 300.67(b)(3).

²⁷ 50 C.F.R. § 300.67(b)(1)(ii).

ANALYSIS

The first issue I must resolve in this appeal is whether Appellant meets the minimum participation requirements to be eligible for a CHP. Under CHLAP regulations, minimum participation requirements for a CHP are five or more bottomfish logbook fishing trips during one year of the qualifying period, namely 2004 or 2005, and five or more halibut logbook fishing trips during the recent participation period, namely 2008.²⁸

Appellant properly reported twenty-six logbook fishing trips to ADF&G for 2008, and reported no qualifying trips for 2004 or 2005 to ADF&G. Thus, while he meets the minimum participation requirements for 2008, Appellant does not meet the minimum participation requirements for 2004 or 2005. Since the CHLAP regulations require minimum participation in both 2004 or 2005, and 2008, Appellant does not meet the minimum participation requirements for a CHP.

The next issue I must resolve in this appeal is whether Appellant can obtain a CHP as a successor-in-interest. Under the CHLAP regulations, a putative successor-in-interest must prove that its predecessor reported five or more bottomfish logbook fishing trips during one year of the qualifying period, either 2004 or 2005, and reported five or more halibut logbook fishing trips during the recent participation period, 2008.²⁹ As NMFS states in pertinent part in the CHLAP regulations: "If [a] person is applying [for a permit] as a successor-in-interest to the person to which ADF&G issued the Business Owner Licenses that authorized logbook trips *that meet the participation requirements described in paragraphs (b)(1)(ii) of this section,*" NMFS will require certain proof of the applicant's status as successor-in-interest.³⁰ The participation requirements found in paragraph (b)(1)(ii) are "five (5) bottomfish logbook fishing trips or more during one year of the qualifying period [2004 or 2005]; and...five (5) halibut logbook fishing trips or more during the recent participation period [2008]."³¹

In November of 2007, Appellant purchased the assets of [REDACTED]. Given the date of the sale, before 2008, Appellant cannot claim that he is a successor-in-interest to [REDACTED] or [REDACTED]. This is because neither entity satisfied the recent participation requirement of reporting at least five halibut logbook fishing trips in 2008. Thus, Appellant cannot establish eligibility based on the successor-in-interest provisions of the CHLAP regulations.

While Appellant makes several arguments on appeal that he is a successor-in-interest to [REDACTED], or [REDACTED] the dispositive fact in this case is that neither of those entities met the minimum participation requirements for the recent period, 2008. Thus, Appellant failed to establish by a preponderance of the evidence that under the CHLAP regulations he is a successor-in-interest to either of those entities.

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

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

³⁰ 50 C.F.R. § 300.67(b)(1)(iii)(emphasis added).

³¹ 50 C.F.R. § 300.67(b)(1)(ii).

