

(ADF&G) in 2005 but had not requested a corresponding logbook.⁷ Without at least five logbook fishing trips reported in 2004 or 2005, Appellant did not meet the minimum participation requirement for a CHP. On June 9, 2010, RAM sent Appellant a Notice of Opportunity to Submit Evidence (Notice). In the Notice, RAM informed Appellant he had thirty days to provide additional information that could establish his eligibility for a CHP.

On July 6, 2010, RAM received Appellant's letter in response to the Notice.⁸ In the letter, Appellant explained that in May 2005, he started his business and operated his charter trips on Vessel which was partly owned by [REDACTED] (Partner). Appellant explained that both parties had been issued an ADF&G Business Owner Licenses in 2005, but chose to report their trips in only the logbook assigned to Partner. Appellant assumed that he could log his trips in the logbook assigned to Partner and still be able to receive credit for them due to their sharing of the boat. Appellant also submitted a print out indicating that he did hold a combined ADF&G Business and Guide License in 2005 with his letter.⁹

On October 13, 2010, RAM issued the IAD at issue in this appeal.¹⁰ In the IAD, RAM denied Appellant's application for a CHP. RAM reasoned that the Official Record, which RAM uses to determine applicant's eligibility, showed Appellant was not the holder of the ADF&G Business Owner License that the logbook was authorized under in 2005.¹¹ RAM explained that Partner had been issued vessel registration 51834, and that the logbook trips associated with that vessel registration could not be credited to Appellant.¹²

On December 6, 2010, Appellant timely appealed the IAD to OAA.¹³ With the appeal, Appellant renewed his claim that he did participate in the 2005 season and clarified that he was sharing the logbook with Partner because they were part owners of Vessel.¹⁴ Appellant explained that he was unaware that such a situation would prevent him from being eligible for a CHP, and could only offer the excuse that he lacked the knowledge due to it being his first year in business.¹⁵

On February 16, 2011, NAO acknowledged receipt of Appellant's appeal and provided Appellant until March 18, 2011, to supplement the record.¹⁶ On March 18, 2011, Appellant submitted another letter which reiterated his stance as well as the 2005 logbook pages filled out by Appellant.¹⁷ Appellant also included letter from booking companies that attested to Appellant's participation in the 2005 charter fishing season.¹⁸

⁷ Original File Tab, Print Summary created January 26, 2010.

⁸ Original File Tab, Appellant's type-written response to RAM's Notice received on July 6, 2010.

⁹ Original File Tab, Appellant's type-written response to RAM's Notice received on July 6, 2010.

¹⁰ Original File Tab, IAD.

¹¹ Original File Tab, IAD page 2.

¹² Original File Tab, IAD page 3.

¹³ Pleadings File Tab, Appellant's appeal letter received on December 6, 2010.

¹⁴ Pleadings File Tab, Appellant's appeal letter received on December 6, 2010.

¹⁵ Pleadings File Tab, Appellant's appeal letter received on December 6, 2010.

¹⁶ Appeals Correspondence Tab, NAO letter dated February 26, 2011.

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.¹⁹

ISSUES

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

Did Appellant establish by a preponderance of the evidence that he met the minimum participation requirement for the qualifying period by properly reporting to ADF&G five or more bottomfish logbook fishing trips provided during 2005?

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

FINDINGS OF FACT

1. In 2005, ADF&G issued Appellant's charter fishing business a Business Owner License.²⁰
2. In 2005, to log his trips, Appellant used the logbook issued to Partner under his own ADF&G Business Owner License.
3. In 2008, ADF&G issued Appellant's charter fishing business a Business Owner License and a logbook.²¹
4. In 2008, Appellant reported sixty-six halibut logbook fishing trips to ADF&G for his business in 2008.²²

¹⁷ Pleadings Tab, Appellant's type-written response to NAO's acknowledgment letter received on March 18, 2011.

¹⁸ Pleadings File Tab, signed letter from ██████████ Dated March 15, 2011 and ██████████

50 C.F.R. § 679.43 (g) and (k).

²⁰ Original File Tab, Appellant's type-written response to RAM's Notice received on July 6, 2010.

²¹ Original File Tab, Appellant's type-written response to RAM's Notice received on July 6, 2010.

²² Original File Tab, IAD page 2.

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 that has been authorized by the ADF&G Business Owner License held by the person or entity.²⁴

To be eligible for a permit, an applicant must 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 recent participation period in 2008.²⁵

A "logbook fishing trip" means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to ADF&G in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.²⁶

A "bottomfish logbook fishing trip" is a logbook fishing trip that was reported 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.²⁷

The Official Record is the information NMFS prepared regarding participation in charter halibut fishing in Area 2C and Area 3A. NMFS used the Official Record to implement the CHLAP, including evaluating applications for CHPs.²⁸

ANALYSIS

The issue before me is whether Appellant has shown by a preponderance of the evidence that he properly reported to ADF&G a minimum of five bottomfish logbook fishing trips in 2005.²⁹ A "bottomfish logbook fishing trip" is a logbook fishing trip that was reported 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.³⁰

²³ 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)(2).

²⁸ 50 C.F.R. § 300.67(f)(5).

²⁹ 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).

³⁰ 50 C.F.R. § 300.67(f)(2).

In his appeal, Appellant concedes he did not record any of the “bottomfish logbook fishing trips” taken by him in 2005 under his own business’s 2005 logbook. The logbook in 2005 referenced by Appellant in his appeal had been issued under the Business Owner License for Partner. Both Appellant and Partner’s trips were taken and reported pursuant to Partner’s Business Owner’s License and Partner’s logbook; under the CHLAP regulations, Appellant cannot be credited with logbook trips recorded in Partner’s logbook.³¹ Since the minimum participation requirement is five or more “bottomfish logbook fishing trips” in 2005, and Appellant reported none, RAM did not err in the IAD when it notified Appellant his application for a CHP was denied.

On appeal, Appellant argues that NMFS should credit the trips he recorded in Partner’s logbook. In support of that argument, Appellant submitted statements from booking agents that attested to Appellant’s participation in 2005 charter fishing season.³² However, since the trips Appellant references in his appeal were reported in a logbook issued to another ADF&G Business Owner License holder, the CHLAP regulations do not support issuance of a permit to Appellant.³³

In reaching my decision about this case, I have carefully reviewed the entire file, including Appellant’s appeal documentation. I have considered Appellant’s statement explaining the hardships his business will experience if a permit is not awarded. However, I am bound to follow the CHLAP regulations, and as such, am not authorized to provide Appellant relief under those regulations and the facts of this case.

CONCLUSIONS OF LAW

Pursuant to CHLAP regulations, Appellant has not shown he properly reported the minimum of five “bottomfish logbook fishing trips” in 2005 to ADF&G.

Appellant cannot be credited with the 2005 logbook trips recorded by Appellant in Partner’s logbook.

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

³¹ 50 C.F.R. § 300.67(b)(1)(ii), (2), and (3).

³² Pleadings File Tab, signed letter from ██████████, Dated March 15, 2011 and ██████████

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³³ 50 C.F.R. § 300.67(b)(2)(i)-(ii).

ORDER

The IAD dated October 13, 2010 is upheld. This decision takes effect thirty days from the date issued, November 2, 2011,³⁴ 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, October 13, 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.



Steven Goodman
Administrative Judge

Date Issued: October 3, 2011

³⁴ 50 C.F.R. § 679.43(k) and (o).