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

In re Application of	)	Appeal No. 11-0035
[redacted]	)	DECISION on REMAND
Appellant	)	

On November 18, 2011, NAO issued the initial Decision in this appeal. On December 16, 2011, the Regional Administrator (RA) for the National Marine Fisheries Service, Alaska Regional Office, issued a stay of the Decision until February 17, 2012. On January 26, 2012, the RA issued an Order Remanding Decision remanding NAO's November 18, 2011, Decision so that NAO may address the issues of whether Appellant is a successor-in-interest to [redacted] In his order, the RA directed NAO to consider a related appeal, *In Re Application of* [redacted] *dba* [redacted] Appeal No. 11-0033. The RA indicated that both appeals include successor-in-interest claims for logbook fishing trips made by the vessel [redacted].

On March 2, 2012, NAO issued a Request for Information (RFI) to Appellant. The RFI requested the following information:

1. Documentation that [redacted] has been dissolved for the purposes of the Program and that Appellant is the successor-in-interest to that dissolved entity.

2. Identity of all owners of [redacted].

On March 22, 2012, Appellant responded to the RFI. Appellant stated in 60 days, and upon certain conditions, the Alaska Division of Corporations, Business, and Professional Licensing will dissolve [redacted] Appellant also indicated that [redacted] was a 98.5% owner of [redacted] and that he has no information regarding other owners of that entity. Appellant's response included the following documents:

1. [redacted] death certificate.

2. [redacted] Articles of Organization.

3. [redacted] 2007 Biennial Report.

4. A letter from the Alaska Division of Corporations, Business and Professional Licensing indicating that [redacted] may be dissolved within 60 days of March 22, 2012.

On March 28, 2012 and April 9, 2012, Appellant further responded to the RFI; Appellant stated [redacted] will be dissolved 65 days after March 28, 2012.

This Decision supplements the NAO Decision dated October 19, 2011.

ADDITIONAL FINDINGS OF FACT

1. [redacted] reported no bottomfish logbook fishing trips to ADF&G in 2004 or 2005.

2. [redacted] is a sole proprietorship.[2]

3. [redacted] is a limited liability company.[3]

4. On March 2, 2009, Appellant purchased the vessel [redacted] from [redacted].[4]

ANALYSIS

Under the successor-in-interest provision of the CHLAP regulation, an applicant must, as a preliminary matter, demonstrate the person he or she is claiming to be the successor to was issued an ADF&G Business Owner License authorizing logbook fishing trips, and that this person met the participation requirements for a permit.[5]

A person is defined under the CHLAP regulation as the individual, corporation, firm, or association to which ADF&G issued the ADF&G Business Owner License authorizing logbook fishing trips.[6]

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[1] Original File Tab, printed summary [redacted]

[2] Original File Tab, Alaska Division of Corporate Business, and Professional Licensing, License Detail, [redacted]

[3] Original File Tab, Alaska Corporations, Business and Professional Licensing, [redacted] Alaska Division of Banking, Securities, and Corporations, Articles of Organization, [redacted].

[4] Original File Tab, Letter from [redacted], dated March 19, 2010, received March 25, 2010; Bill of Sale, dated March 2, 2009, received March 25, 2010.

[5] *See* 50 C.F.R. § 300.67(b)(1)(iii).

[6] *See* 50 C.F.R. § 300.67(b)(1)(ii). ADF&G Business Owner License is a regulatory term that includes a sport fish business registration and a sport fish business owner license. *See* 50 C.F.R. § 300.67(b)(3).

Comments on the CHLAP Final Rule indicate that two different businesses cannot combine their logbook histories to qualify for a permit, notwithstanding similarities in ownership in the qualifying period and the recent participation period.[7]

While [redacted] is a sole proprietorship, [redacted] is a limited liability company. These businesses, with different names, organizational forms and ownership structures are two distinct "persons" under the CHLAP regulation.[8] The logbook histories of these businesses may not be combined to satisfy the minimum participation requirements for a permit. Although [redacted] timely and properly reported 133 halibut logbook fishing trips to ADF&G in 2008, it did not report any bottomfish logbook fishing trips to ADF&G in 2004 or 2005. Therefore, under the CHLAP regulation, Appellant cannot establish he is a successor-in-interest to [redacted] since this company did not meet the minimum participation requirements for a permit for the qualifying period.

Even if Appellant established [redacted] met the participation requirements for a permit, he still would not qualify as a successor-in-interest. Under the CHLAP regulation, a putative successor-in-interest to an entity must provide written documentation that at the time of the application the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

50 C.F.R. § 300.67(b)(1)(iii)(B).states:

> If the applicant is applying as a successor-in-interest to an entity that is not an individual, the applicant must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

Appellant stated in both his March 22, 2012, and March 28, 2012, responses to the RFI that [redacted] has not been dissolved. Although this business is currently not listed as "active" and only listed as "non-compliant" on the Alaska Corporations Division web-site, the State of Alaska has nonetheless not dissolved this company. Appellant, therefore, cannot be a successor-in-interest to [redacted] because the regulations require the entity has already been dissolved and this entity is not dissolved.

In Re Application of [redacted] *dba* [redacted] Appeal No. 11-0033 does not apply to the facts of the present case as the Appellant in that case appears to be claiming he is a successor-in-interest to the Appellant in the present case. Trips made by the vessel [redacted] are not relevant to this appeal because Appellant does not qualify as a successor-in-interest for the reasons stated above. Additionally, the identity

[7] 75 Fed. Reg. 578 (January 5, 2010).
[8] 50 C.F.R. § 300.67(b)(1)(ii).

of all owners of [redacted] are not relevant because Appellant does not qualify as a successor-in-interest.

CONCLUSIONS OF LAW

RAM correctly denied Appellant's application for a CHP. Appellant is not eligible for a CHP because Appellant did not prove by a preponderance of the evidence that [redacted] is the same person issued the ADF&G Business Owner License that authorized logbook fishing trips that meet the minimum participation requirements in both 2004 or 2005 and 2008. Appellant did not prove by a preponderance of the evidence that [redacted] is an entity that has been dissolved.

The IAD is consistent with CHLAP regulations.

ORDER

The NAO Decision dated November 18, 2011, is supplemented by this Decision on Remand. The IAD dated December 16, 2010, is upheld. This decision is effective thirty (30) days from the date issued[9], May 11, 2012, 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 reverses, modifies, or remands 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 Standard Time, on the tenth day after the date of this Decision, April 23, 2012. 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 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.

[redacted]

Steven Goodman
Administrative Judge

Date Issued: April 11, 2012

[9] 50 C.F.R. § 679.43(k) and (o).