

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

ORDER DENYING MOTION
FOR RECONSIDERATION

On November 29, 2011, the National Appeals Office (NAO), a division within the National Marine Fisheries Service (NMFS), issued a Decision in this appeal. On December 9, 2011, NAO received Appellant's Motion for Reconsideration. Appellant's Motion was filed timely.

Pursuant to NAO's policy, a Motion for Reconsideration must state material issues of law or fact that the appellant believes the Administrative Judge misunderstood or overlooked and must contain an argument, or points and authorities, in support thereof.¹ I have carefully reviewed the Decision in this case and Appellant's Motion. I conclude the Decision does not contain material errors of law or fact. Accordingly, I deny Appellant's Motion.

Appellant argues in his Motion that NAO misinterpreted the plain English meaning of the successor-in-interest provisions of the Charter Halibut Limited Access Program (CHLAP) regulations. Appellant also states in his Motion that on January 19, 2011, Restricted Access Management Program (RAM) sent him an Initial Administrative Determination (IAD) which states in part that he may claim to be a successor-in-interest; Appellant argues this statement implies his November 2007 purchase qualifies him as a successor-in-interest. Appellant also argues in his Motion that because [REDACTED] was in possession of qualifying period bottomfishing histories and because this entity satisfied the recent participation requirements, his 2007 purchase of this business qualifies him as a successor-in-interest. Appellant additionally indicates in his Motion that his family would not have purchased his lodge unless he was certain he would receive the fishing histories of the predecessor entities.

As stated in the Decision², 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.³ The participation requirements found in paragraph (b)(1)(ii) are "five (5) bottomfish logbook

¹ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>.

² Decision issued, page 5.

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

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].”⁴

Because Appellant purchased the assets of [REDACTED] in November of 2007, Appellant is not a successor-in-interest to [REDACTED] since neither [REDACTED] satisfied the recent participation requirement of reporting at least five halibut logbook fishing trips in 2008. The CHLAP regulations require a putative successor-in-interest establish its predecessor met both the qualifying and recent participation requirements prior to the purchase of that entity by the putative successor-in-interest.

Although Appellant claims RAM’s January 19, 2011, IAD statement implies he is a successor-in-interest, the full sentence from the IAD from which Appellant relies states: “Accordingly, [REDACTED] may claim to be a successor-in-interest to this business; however, this is not a business that qualifies under 50 CFR 300.67(b)(1)(ii)(A) and (B), therefore, the successor-in-interest provisions at 50 CFR 300.67(b)(1)(iii) do not apply.” The full IAD statement as quoted above does not support Appellant’s claim that he is a successor-in-interest because it indicates the successor-in-interest provisions do not apply in his case.

I recognize Appellant’s financial hardship and interests in charter halibut fishing, however the CHLAP regulations do not support that Appellant qualifies as a successor-in-interest or that he qualifies for a Charter Halibut Permit (CHP).

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Appellant is not eligible for a CHP as a successor-in-interest to [REDACTED]

The new effective date of the Decision is March 15, 2012 subject to the Regional Administrator’s review.⁵

[REDACTED]

Steven Goodman
Administrative Judge

Date Issued: February 14, 2012

⁴ 50 C.F.R. § 300.67(b)(1)(ii).

⁵ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).