

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

In re Application of

[REDACTED]

Appellant

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Appeal No. 10-0073

DECISION

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STATEMENT OF THE CASE

This appeal is before the National Appeals Office (NAO) a division within the National Marine Fisheries Service (NMFS), Office of Management and Budget. NAO operates out of NOAA's headquarters in Silver Spring, MD 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 were filed with OAA. The undersigned is the administrative judge assigned to review and decide this matter pursuant to the federal regulation that is published in the Code of Federal Regulations at 50 C.F.R. § 679.43.

This appeal involves the Charter Halibut Limited Access Program (CHLAP), for which NMFS had regulations codified at 50 C.F.R. § 300.67. "[T]he principle concern [behind the development of the CHLAP] was overcrowding of productive halibut grounds due to growth of the charter vessel sector."<sup>1</sup> Generally, CHLAP is designed to limit the number of vessels used in charter halibut fishing through a permitting system.<sup>2</sup> Pursuant to CHLAP, on March 12, 2010, [REDACTED] (collectively referred to herein as Appellant) applied for a charter halibut permit (CHP or permit).

NMFS's Restricted Access Management program (RAM) evaluated Appellant's application. On April 22, 2010, RAM sent Appellant its Notice of Opportunity to Submit Evidence (Notice).<sup>3</sup> In the Notice, RAM wrote that it understood Appellant was claiming he was eligible for a permit under a certain provision of the CHLAP regulations that allows military members to obtain a permit provided they meet certain conditions.<sup>4</sup> RAM further advised Appellant that he had until May 24, 2010 to submit additional evidence in support of his claim.

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<sup>1</sup> 75 Fed. Reg. 554, 554.

<sup>2</sup> 75 Fed. Reg. 554, 554.

<sup>3</sup> Original File, Noticed of Opportunity to Submit Evidence dated April 22, 2010.

<sup>4</sup> Original File, Noticed of Opportunity to Submit Evidence dated April 22, 2010.

By response dated May 23, 2010, Appellant submitted documentation in support of his claim.<sup>5</sup> On August 31, 2010, RAM issued the Initial Administrative Determination (IAD) at issue in this appeal.<sup>6</sup> In the IAD, RAM denied Appellant's application for a CHP. RAM reasoned that the Official Record,<sup>7</sup> which RAM uses to determine applicants eligibility, showed Appellant did not meet the minimal five bottomfish logbook fishing trip requirement for 2004 or 2005. RAM also noted that the Official Record did show that Appellant met the minimal five halibut logbook fishing trips requirement for 2008.

Further, RAM acknowledged Appellant's claim that he should qualify based on an exception to the rules that require proof of participation in 2004 or 2005, and 2008. That exception is commonly referred to as the military unavoidable circumstance provision. As indicated by RAM in the IAD, the CHLAP regulations provide that those claims are to be resolved by OAA, (now succeeded by NAO). In order for NAO to adjudicate Appellant's claim, RAM advised Appellant the regulations require him to timely file an appeal with OAA. Appellant's timely filed appeal followed.

After providing Appellant with thirty days written notice, I held an oral hearing on April 25, 2011. At the hearing, Appellant and his witness, Master Chief, testified. At the hearing I established May 23, 2011 as a deadline for submitting additional argument and documentation in support of Appellant's claim. On May 22, 2011, Appellant submitted additional documentation to NAO. The additional documentation has been made part of the record.

I have determined that the information in the record is sufficient to render a decision within the meaning of 50 C.F.R. § 679.43(k)&(n)(8). I therefore close the record and render this decision. In reaching my decision, I have reviewed the entire case record, including the recording of the hearing and post-hearing submissions.

## ISSUES

The heart of this appeal is Appellant's desire to receive a CHP. RAM and Appellant are in agreement that Appellant does not qualify for a permit under the CHLAP rules that predicate eligibility for a permit on participation in both 2004/2005 and 2008, since Appellant's Official Record does not show a minimal of five logbook fishing trips for 2004 or 2005.

Based on that lack of participation and Appellant's arguments on appeal, I must determine whether Appellant can qualify for a permit under what can be referred to as the "military unavoidable circumstance" provisions of the CHLAP rules. To resolve that issue, I will need to address the following issues:

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<sup>5</sup> Original File Tab, Charter Halibut Permit Application, Instructions for Processing Response, 30 Day Notice of Opportunity to Submit Evidence with attachments.

<sup>6</sup> Original File Tab, IAD.

<sup>7</sup> The Official Record is the information NMFS prepared regarding participation in charter halibut fishing in Area 2C and Area 3A, which NMFS will use to implement the CHLAP and evaluate applications for charter halibut permits. 50 C.F.R. § 300.67(f)(5).

1. Did Appellant show he timely and properly reported a minimum of five charter halibut logbook fishing trips to the Alaska Department of Fish and Game [ADF&G] for 2008;
2. If the answer to Question 1 is “yes,” then I will decide whether Appellant did not meet the participation requirements in the “qualifying period,” i.e., timely and properly reported a minimum of five charter bottomfish logbook fishing trips to the Alaska Department of Fish and Game [ADF&G] for 2004 or 2005;
3. If the answer to Question 2 is “yes,” I must decide if Appellant was ordered to serve as a member of the United States military and the service was rendered in 2004 and/or 2005;
4. If the answer to Question 3 is “yes,” I must decide if Appellant specifically intended to operate a charter halibut business.
5. If the answer to Question 4 is “yes,” I must decide if Appellant’s specific intent to operate a charter halibut business “thwarted” by the order to serve in the military.<sup>8</sup>

If the answer to Question 5 is “no,” then Appellant has not established he is eligible for a CHP under the military unavoidable circumstances provisions. I therefore must then uphold the IAD and not order RAM to issue a permit based on Appellant meeting the military unavoidable circumstances provisions.

#### FINDINGS OF FACT

1. In 2001, Appellant obtained his captain’s license and started acquiring gear for his charter fishing business in Alaska.<sup>9</sup>
2. At the same time, Appellant was a member of the United States Coast Guard (USCG).<sup>10</sup>
3. While in the USCG in Alaska, Appellant worked the nightshift. And because of that schedule, was also able to operate a charter fishing business between 2002 and 2006.<sup>11</sup>
4. Since establishing the website for his business in 2002, that has been Appellant’s main source of advertising. Appellant also provides charters to charities, which also helps market his business in the community.<sup>12</sup>

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<sup>8</sup> 50 C.F.R. § 300.67(g)(3)(ii).

<sup>9</sup> Appeal File Tab, Appellant’s letter of appeal received by RAM on October 13, 2010.

<sup>10</sup> Appeal File Tab, Appellant’s letter of appeal received by RAM on October 13, 2010.

<sup>11</sup> Appellant’s hearing testimony.

<sup>12</sup> Appellant’s hearing testimony.

5. In 2004, Appellant was deployed for the United States military on three separate occasions. The deployments were of short duration (four to five weeks).<sup>13</sup>

6. In the USCG, the Assignment Officer (AO) determines whether a service member will be transferred and if so where to.<sup>14</sup> However, there are negotiations that occur between the station who wants to retain service members and the AO.<sup>15</sup> Typically, in October tentative decisions are made about transfers. This is followed by telephone calls in November advising who will be transferred where. Then in early December there are face-to-face negotiations over the AO's slate for transfers.<sup>16</sup> Thereafter, the slates are finalized and provided to administration in late March/early April to allow for the moves to occur. In March, the service member receives his or her orders and once he or she receives the order has sixty to eighty days to move. In any given year, one or two service members who are told under no case they will be able to change their orders in fact do have orders different than what was previously discussed.<sup>17</sup>

7. Appellant testified that in early November 2004, Appellant was advised by Master Chief that he had "hard orders" to transfer to Sacramento, CA.<sup>18</sup> However, Appellant never received an official, hard-copy order to transfer to Sacramento.<sup>19</sup>

8. In and around November-December 2004, Master Chief had three or four conversations with the AO in an attempt to persuade him to allow Appellant to remain stationed in Alaska. The AO remained firm that Appellant would be transferred to Sacramento.<sup>20</sup>

9. In November 2004, Master Chief and AO negotiated who would be transferred from the Alaska post. Master Chief was interested in retaining Appellant because of his skill set and because he would be hard to replace. Ultimately of the eighty slated to transfer from the air station in Alaska where Appellant served, forty to forty-five actually did.<sup>21</sup>

10. Based on his conversation with Master Chief, in November 2004, Appellant and his wife talked about Appellant's family moving. Since Appellant was eligible to retire, they decided that Appellant's family would stay in Alaska while Appellant completed what was in all likelihood his final tour in Sacramento.<sup>22</sup>

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<sup>13</sup> Appellant's hearing testimony.

<sup>14</sup> Appeal File, Master Chief's letter received by RAM on March 12, 2010.

<sup>15</sup> Master Chief's hearing testimony.

<sup>16</sup> Master Chief's hearing testimony.

<sup>17</sup> Master Chief's hearing testimony.

<sup>18</sup> Appellant's hearing testimony.

<sup>19</sup> Appellant's hearing testimony.

<sup>20</sup> Appellant's hearing testimony; Master Chief's hearing testimony.

<sup>21</sup> Master Chief's hearing testimony.

<sup>22</sup> Appellant's hearing testimony.

11. In early December 2004, Appellant sold his vessel used in his charter business (Vessel) since he anticipated being stationed in Sacramento for one-and-a-half to two years.<sup>23</sup>

12. Until mid-December 2004, Master Chief was being told by AO that “under no circumstances” would Appellant be allowed to stay in Alaska.<sup>24</sup>

13. In mid or late December 2004, the AO advised that if Appellant put in for retirement, he could stay at his Alaska post; Appellant stayed in Alaska.<sup>25</sup>

14. Appellant never transferred in the USCG without written orders, although they tended to come very close to the time of a move.<sup>26</sup>

15. Departures of service members transferred from an USCG air station occurred in June-July 2005. New arrivals to USCG air stations occurred in July-August 2005.<sup>27</sup>

16. The departures and arrivals (or transfers) that occurred on USCG air stations in 2005, occurred pursuant to official written orders which were provided to the service member about a week before actual departure.<sup>28</sup>

17. In any given year, two or three USCG service members are advised they will absolutely have to transfer, but then do not get official orders for a transfer.<sup>29</sup>

18. For 2004, Appellant reported to ADF&G three bottomfish logbook fishing trips.<sup>30</sup>

19. For 2005, Appellant reported to ADF&G two bottomfish logbook fishing trips.<sup>31</sup>

20. In 2004 and 2005, Appellant did not record then report to ADF&G all his halibut charter fishing trips because he believed there was no place on the logbook to indicate halibut trips and/or because he believed ADF&G did not care about the recording of halibut trips.<sup>32</sup>

21. In or around early 2005, Appellant had a friend of his look at a vessel (Vessel 2) located in the Seattle area. Appellant had his friend, a rockfish charter

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<sup>23</sup> Appellant’s hearing testimony.

<sup>24</sup> Master Chief’s hearing testimony.

<sup>25</sup> Appellant’s hearing testimony; Master Chief’s hearing testimony.

<sup>26</sup> Appellant’s hearing testimony; Master Chief’s hearing testimony.

<sup>27</sup> Appellant’s hearing testimony.

<sup>28</sup> Master Chief’s hearing testimony.

<sup>29</sup> Master Chief’s hearing testimony.

<sup>30</sup> Original File Tab, Print Summary created on January 26, 2010.

<sup>31</sup> Original File Tab, Print Summary created on January 26, 2010.

<sup>32</sup> I draw this inference from Appellant’s hearing testimony.

operator, advise him about the condition of the boat and its suitability for chartering.<sup>33</sup>

22. In late February 2005, Appellant purchased Vessel 2.<sup>34</sup>

23. When purchased, Vessel 2 was located in Seattle. A vessel that met his needs and was located closer to Appellant's business was not available.<sup>35</sup>

24. In or around July 2005, Appellant's new vessel (Vessel 2) was delivered to him.<sup>36</sup>

25. Once delivered, Appellant looked at Vessel 2 and realized, although basically sound, he needed to make certain repairs or modifications in order to bring it up to safety standards he felt were needed based on his twenty-three years as an aircraft mechanic. The repairs/modifications were completed in about a month.<sup>37</sup>

26. On March 12, 2010, Appellant applied for a CHP.<sup>38</sup>

27. The Official Record shows Appellant took sixty-two halibut logbook fishing trips in 2008.<sup>39</sup>

28. In 2008, Appellant took sixty-two halibut logbook fishing trips.<sup>40</sup>

## PRINCIPLES OF LAW

Minimum participation requirements to qualify for a CHP 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.<sup>41</sup>

Minimum participation criteria for a transferable permit are as follows: an applicant must have reported fifteen or more bottomfish logbook fishing trips from the same vessel during one year of the qualifying period, namely 2004 or 2005, and must have reported fifteen halibut logbook fishing trips or more from the same vessel during the recent participation period, namely 2008.<sup>42</sup> The number of transferable CHPs issued to an

<sup>33</sup> Appellant's hearing testimony.

<sup>34</sup> Appellant's hearing testimony.

<sup>35</sup> Appellant's hearing testimony.

<sup>36</sup> Appellant's hearing testimony.

<sup>37</sup> Appellant's hearing testimony.

<sup>38</sup> Original File, Application for Charter Halibut Permit for IPHC [International Pacific Halibut Commission] Regulatory Areas 2C and 3A.

<sup>39</sup> Original File Tab, Print Summary created on January 26, 2010.

<sup>40</sup> Original File Tab, Print Summary created on January 26, 2010.

<sup>41</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B); 50 C.F.R. § 300.67(f)(6) and (7).

<sup>42</sup> 50 C.F.R. § 300.67(d)(1)(i) and (ii).

applicant will be equal to the lesser of the number of vessels that met the minimum transferable permit qualifications described above.<sup>43</sup>

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 [ADF&G] in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.<sup>44</sup>

A “bottomfish logbook fishing trip” means a logbook fishing trip in the qualifying period that was reported to the State of Alaska [ADF&G] 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.<sup>45</sup>

A “halibut logbook fishing trip” means a logbook fishing trip in the recent participation period that was reported to the State of Alaska [ADF&G] 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.<sup>46</sup>

Certain applicants who served in the military in the qualifying period of 2004 and/or 2005 may be eligible for a CHP under a version of the unavoidable circumstance provisions codified at 50 C.F.R. § 300.67(g). This concept may be referred to as the “military unavoidable circumstance” provisions.

In addition to other requirements that may apply, such as timely applying for a permit,<sup>47</sup> the requirements for a military unavoidable circumstance claim are:

1. The applicant meets the requirements for operating a charter fishing business in 2008, known as the recent participation period.<sup>48</sup> That is, in 2008, the applicant who claims he meets the requirements of the military unavoidable circumstance provision, must show he timely and properly reported a minimum of five charter halibut logbook fishing trips to ADF&G;
2. The applicant does not meet the participation requirements, i.e., the minimal five charter bottomfish logbook trips in 2004 or 2005;<sup>49</sup>
3. The applicant was ordered to certain types of military service. That is, when ordered, the applicant was ordered to serve as a member of the United States

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<sup>43</sup> 50 C.F.R. § 300.67(d)(2).

<sup>44</sup> 50 C.F.R. § 300.67(f)(4).

<sup>45</sup> See 50 C.F.R. § 300.67(f)(2).

<sup>46</sup> See 50 C.F.R. § 300.67(f)(3).

<sup>47</sup> See 50 C.F.R. § 300.67(b)(1).

<sup>48</sup> 50 C.F.R. § 300.67(b)(1)(B), (f)(7), and (g)(3).

<sup>49</sup> 50 C.F.R. § 300.67(g)(3).

military, the military reserve, or National Guard.<sup>50</sup> The service was rendered during the qualifying period in 2004 or 2005.<sup>51</sup>

4. The applicant specifically intended to operate a charter halibut business.<sup>52</sup>
5. The applicant's specific intent was "thwarted" by the order to serve in the military.<sup>53</sup>

"Applicant selected year" means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant's number of transferable and nontransferable permits.<sup>54</sup>

The sport fishing season ran from February 1 through December 31 in 2004, 2005, and 2008.<sup>55</sup>

The Official Record is the information NMFS prepared regarding participation in charter halibut fishing in Area 2C and Area 3A, which NMFS will use to implement the CHLAP and evaluate applications for charter halibut permits.<sup>56</sup>

## ANALYSIS

As indicated in the Issues section of this Decision, this appeal is about Appellant attempting to qualify for a permit under the military unavoidable circumstances provision of the CHLAP regulation. Deciding whether Appellant will qualify revolves around five questions which I address below.

### **Did Appellant show that he timely and properly reported a minimum of five charter halibut logbook fishing trips ADF&G for 2008?**

The CHLAP regulations require a minimal showing of five halibut logbook trips in 2008 in order for Appellant to establish the first prong of a military unavoidable circumstance claim. There is no dispute over this issue. The Official Record shows Appellant properly and timely reported sixty-two halibut logbook fishing trips to ADF&G for 2008. I therefore move to the next regulatory issue.

### **Did Appellant meet the participation requirements in the "qualifying period," i.e., timely and properly reported a minimum of five charter bottomfish logbook fishing trips to ADF&G for 2004 or 2005?**

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<sup>50</sup> 50 C.F.R. § 300.67(g)(3)(i).

<sup>51</sup> 50 C.F.R. § 300.67(g)(3)(i).

<sup>52</sup> 50 C.F.R. § 300.67(g)(3)(ii).

<sup>53</sup> 50 C.F.R. § 300.67(g)(3)(ii).

<sup>54</sup> 50 C.F.R. § 300.67(f)(1).

<sup>55</sup> See 50 C.F.R. § 300.67(f)(6) and (7).

<sup>56</sup> 50 C.F.R. § 300.67(f)(5).

Under the CHLAP regulations, the military unavoidable circumstance provision can only be applied in cases in which the applicant did not report the minimal five charter bottomfish logbook fishing trips in 2004 or 2005. In this case, the Official Record shows Appellant properly and timely reported to ADF&G three such trips in 2004 and two such trips in 2005. The Official Record is based on data in an ADF&G database and is used by RAM in determining whether an applicant meets participation requirements. Although Appellant testified, and I have found Appellant's testimony credible, that he thought he completed more charter trips than appeared in the Official Record, that testimony alone does not persuade me that the Official Record is in error. "Bottomfish logbook trips" have both a timeliness, and substantive component. That is, a charter operator was to report certain information, in a logbook, within certain timeframes and send that information to ADF&G.<sup>57</sup> While one may have conducted bottomfish charter trips, that does not mean he actually timely and properly got the requisite information to ADF&G in a timely manner. Under the circumstances, I find that in both relevant years Appellant did not report the minimal five trips; therefore he meets this prong of his military unavoidable circumstance claim.

**Was Appellant ordered to serve as a member of the United States military and the service was rendered in 2004 and/or 2005?**

To establish a claim under the military unavoidable circumstance provisions, an appellant must show he was ordered to serve as a member of the United States military, and that service was rendered in 2004 and/or 2005. Appellant was not ordered to report to another air station, or transfer from the air station in Alaska where he had been posted for several years, including in 2004 and 2005.

**Did Appellant specifically intend to operate a charter halibut business?**

The CHLAP regulations require a showing that Appellant specifically intended to operate a charter halibut business.<sup>58</sup> The evidence relevant to this prong includes Appellant's interest in charter fishing business, a business started in 2001. Further, Appellant ran his business from 2002 to 2006. Thus, Appellant's specific intent is demonstrated by him actually running a charter halibut business.

**Was Appellant's specific intent to operate a charter halibut business "thwarted" by the order to serve in the military?**

The final prong in an analysis of a military unavoidable circumstance claim is proof that Appellant's specific intent was thwarted by an order for military service. "Thwarted" means prevented or "but for" the order Appellant's intent to operate a charter halibut business would have come to fruition.

In this case there was no order to move to Sacramento nor did Appellant move to Sacramento. Rather, at some point, the order was to remain at the air station where Appellant was currently stationed, in Alaska. In making that finding, I considered the

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<sup>57</sup> See Principles of Law section of this Decision.

<sup>58</sup> See Legal Principles section of this Decision.

testimony that Appellant received “hard orders” in November 2004 to transfer to Sacramento (Finding of Fact 7). While I believe Appellant and Master Chief’s testimony, nevertheless, given the totality of the evidence, I do not think Appellant’s understanding concerning the transfer in November 2004, was an “order” as contemplated by the CHLAP regulations. Other testimony established that service members would not actually move before receipt of hard copy orders. Further, Master Chief’s testimony established that at the time he advised Appellant he had “hard orders” to transfer, was also the time period during which the AO and Master Chief would engage in negotiations concerning who would be transferred and who would not. The AO’s thought about transfer were penciled in and subject to change. Indeed, each year, some tentative transfers were changed prior to the issuance of orders, and in fact, about half of the potential transferees from Appellant’s Alaska air station were not in fact transferred in 2005.

In December Appellant was tentatively told he would be staying in Alaska. Presumably, in March 2005 or thereabouts, Appellant was provided with signed, official orders to stay. The order to stay did not prevent Appellant from chartering. Indeed, the Official Record and his testimony shows he was able to charter. He purchased Vessel 2 in February 2005, Vessel 2 was delivered to Appellant in July 2005, and was worthy for chartering in or around July/August 2005. In fact, Appellant reported two logbook trips, and was equipped to meet the minimal requirement of five.

I understand that for 2005, Appellant recorded only two halibut logbook fishing trips. However, the lack of five qualifying trips in 2005 was not caused or the result of the order to stay in Alaska. Rather, I find by a preponderance of the evidence that in those years Appellant did not record all of the charter halibut trips he took. This finding in no way suggests that Appellant intentionally failed to properly record and report trips. I believe his testimony that he was confused about how to record trips or misunderstood the importance of reporting halibut trips. Nevertheless, the fact is that it is more likely than not that Appellant did not report all the charter halibut trips that he could have for 2005.

In reaching my decision I am also mindful of Appellant’s testimony that in November 2004, he truly believed he was going to be transferred to Sacramento. I have no reason to doubt Appellant’s statements in that regard. However, a preponderance of the evidence shows that Appellant did not actually have orders in November 2004 to transfer to Sacramento. The AO had said that Appellant would be transferring, but until the negotiations occurred and the slate was finalized and then put into orders, Appellant was not under orders within the meaning of the CHLAP regulations. When Appellant decided to sell Vessel he did so because he earnestly anticipated receiving orders to transfer.

Appellant and his witness were credible. And, their service to our country is commendable. However, I am not authorized to issue a decision that is not based on regulatory standards, and based on the CHLAP regulations, Appellant is not eligible for a permit.

## CONCLUSIONS OF LAW

Appellant did timely and properly report a minimum of five charter halibut logbook fishing trips to ADF&G for 2008.

Appellant did not meet the participation requirements in the “qualifying period,” i.e., timely and properly report a minimum of five charter bottomfish logbook fishing trips to ADF&G for 2004 or 2005.

Appellant was ordered to serve as a member of the United States military and the service was rendered in Alaska in 2005.

Appellant specifically intended to operate a charter halibut business.

Appellant’s specific intent to operate a charter halibut business was not “thwarted” by the order to serve in the military.<sup>59</sup>

## ORDER

The IAD dated August 31, 2010 is upheld. This decision takes effect (30) days from the date issued, August 22, 2011,<sup>60</sup> 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, August 1, 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.



Eileen G. Jones  
Chief Administrative Judge

Date Issued: July 21, 2011

<sup>59</sup> 50 C.F.R. § 300.67(g)(3)(ii).

<sup>60</sup> 50 C.F.R. § 679.43(k) and (o).