

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

In re Application of

[REDACTED]

Appellant

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Appeal No. 10-0099

DECISION

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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 Headquarters in Silver Spring, Maryland and maintains an office in the NMFS Alaska Region. NAO is the successor to the Office of Administrative Appeals, Alaska Region (OAA), and is charged with deciding appeals that were filed with OAA. NAO decides these appeals pursuant to the procedure established in federal regulation at 50 C.F.R. § 679.43.

On November 15, 2010, [REDACTED] (Appellant) filed a timely appeal of an Initial Administrative Decision (IAD) issued by the Restricted Access Management (RAM) Program on October 26, 2010.<sup>1</sup> In the IAD, RAM evaluated Appellant's application for a charter halibut permit under the Charter Halibut Limited Access Program.<sup>2</sup>

In the IAD, RAM determined that Appellant did not meet the minimum participation requirements for a charter halibut permit for International Pacific Halibut Commission (IPHC) Regulatory Area 2C.<sup>3</sup> The minimum participation requirement in the qualifying period (2004, 2005) for a non-transferable permit is five bottomfish logbook fishing trips in one year of the qualifying period (2004 or 2005) and five halibut logbook fishing trips in the recent participation period (2008).<sup>4</sup>

To count toward an applicant's permit, the trip must have been reported under the applicant's ADF&G Business Owner License for that year. Appellant had an ADF&G

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<sup>1</sup> Letter from Appellant to NMFS (dated Nov. 8, 2010, received Nov. 15, 2010).

<sup>2</sup> The Charter Halibut Program is codified at 50 C.F.R. §§ 300.61, 300.66, and 300.67. These regulations, and the appeal regulation at 50 C.F.R. § 679.43, are available on the NMFS Alaska Region website: <http://alaskafisheries.noaa.gov/regs/summary.htm>.

<sup>3</sup> IPHC Area 2C is roughly Southeast Alaska. For the coordinates of Area 2C, see 50 C.F.R. § 300.61.

<sup>4</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A) & (B).

Business Owner License in all relevant years and RAM credited all reported trips by Appellant's vessel, [REDACTED] (VESSEL) to Appellant.<sup>5</sup>

The participation requirements for a transferable permit are more stringent in both periods. For a transferable permit, the minimum participation requirement is fifteen bottomfish logbook fishing trips with one vessel in 2004 or 2005 and fifteen halibut logbook fishing trips with one vessel in 2008.<sup>6</sup>

In the IAD, RAM determined that Appellant met the participation requirement in the recent period (2008) for a charter halibut permit. RAM did not specify whether Appellant met the requirements for a transferable or non-transferable permit. But Appellant reported twenty-five halibut logbook fishing trips with [REDACTED] (VESSEL) in 2008.<sup>7</sup> This level of participation meets the participation requirement in the recent period for a transferable permit.

In the IAD, RAM determined, however, that Appellant did not meet the minimum participation requirement in the qualifying period for a non-transferable permit, namely five bottomfish logbook fishing trips in either 2004 or 2005. According to the official charter record, Appellant reported four bottomfish logbook fishing trips in 2004 and one bottomfish logbook fishing trip in 2005.<sup>8</sup>

On appeal, Appellant states that he should receive a charter halibut permit because, in 2004 and 2005, he took charter halibut trips with VESSEL that are in the official charter halibut record. Appellant states that in 2004 he is sure VESSEL took more than four trips and is unsure why only four trips were reported.<sup>9</sup> Appellant states that Captain [REDACTED] (Captain), the captain of VESSEL, states that it was not until 2006 that charter vessel operators had to report halibut caught in the ADF&G logbooks. Appellant further maintains that if Captain was not properly filling out his logbooks, ADF&G staff should have told him when he turned in the logbook reports to the local ADF&G office.<sup>10</sup>

Appellant can appeal the IAD because the IAD directly and adversely affects him, as required by 50 C.F.R. § 679.43(b). Appellant has the burden to prove that the IAD is incorrect and that he meets the requirements for a transferable or non-transferable permit.

I have carefully considered the record in this appeal. I did not order a hearing because Appellant has not alleged facts that, if true, authorize NMFS to issue a charter halibut

<sup>5</sup> 50 C.F.R. § 300.67(b)(1)(ii); IAD at 2.

<sup>6</sup> 50 C.F.R. § 300.67(d)(1)(i).

<sup>7</sup> IAD at 2 – 3; ADF&G printout of Appellant's logbook fishing trips (submitted by Appellant, July 8, 2010).

<sup>8</sup> IAD at 2 – 3.

<sup>9</sup> Letter from Appellant to NMFS (Nov. 8, 2010).

<sup>10</sup> Letter from Appellant to NMFS (Nov. 8, 2010); ADF&G printout of Appellant's logbook fishing trips (submitted by Appellant, July 8, 2010).

permit.<sup>11</sup> I conclude that the record contains sufficient information upon which to decide this appeal.<sup>12</sup> I therefore close the record and issue a decision.

For the reasons that follow, I conclude that Appellant has not shown that he meets the participation requirement in the qualifying period (2004, 2005) for a charter halibut permit.

## ISSUE

The broad issue in this appeal is whether Appellant is eligible for a permit under the regulations establishing the Charter Halibut Limited Access Program. To resolve that issue, I must answer the following:

Did Appellant show that the official charter halibut record is incorrect and that he reported to ADF&G at least five bottomfish logbook fishing trips during one year of the qualifying period (2004 or 2005)?

## FINDINGS OF FACT

I find the following facts by a preponderance of the evidence in the record:

1. Appellant reported twenty-five halibut logbook fishing trips to ADF&G taken with VESSEL in 2008.<sup>13</sup>
2. Appellant reported four bottomfish logbook fishing trips to ADF&G taken with VESSEL in 2004.<sup>14</sup>
3. Appellant reported one bottomfish logbook fishing trip to ADF&G with VESSEL in 2005.<sup>15</sup>
4. Appellant submitted a timely application for a charter halibut permit on March 2, 2010.<sup>16</sup>

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<sup>11</sup> 50 C.F.R. § 679.43(g)(3). If Appellant is alleging that he did actually report trips but the trip reports were lost or misplaced by the Alaska Department of Fish and Game (ADF&G) or NMFS, which I do not believe he has alleged, Appellant has not offered sufficient evidence to support from which I could find actual reporting of trips. 50 C.F.R. § 679.43(g)(3)(iii) (“A hearing will not be ordered on the basis of mere allegations . . .”).

<sup>12</sup> 50 C.F.R. § 679.43(g)(2).

<sup>13</sup> IAD at 2- 3; ADF&G printout of Appellant’s logbook fishing trips (submitted by Appellant, July 8, 2010).

<sup>14</sup> IAD at 2- 3; ADF&G printout of Appellant’s logbook fishing trips (submitted by Appellant, July 8, 2010).

<sup>15</sup> IAD at 2- 3; ADF&G printout of Appellant’s logbook fishing trips (submitted by Appellant, July 8, 2010).

<sup>16</sup> Application (received Mar. 2, 2010).

## PRINCIPLES OF LAW

Pursuant to section 773c of The Halibut Act, the Secretary of Commerce adopted the regulations implementing the Charter Halibut Limited Access Program (CHLAP).<sup>17</sup> The regulations are found at 50 C.F.R. §§ 300.61, 300.66, and 300.67. NMFS may issue charter halibut permits only to applicants that meet the requirements in the charter halibut regulations.

The official charter halibut record is the information prepared by NMFS on participation in charter halibut fishing that NMFS used to implement the CHLAP.<sup>18</sup> NMFS based the official charter halibut record on participation data in saltwater charter logbooks submitted to the Alaska Department of Fish and Game (ADF&G).<sup>19</sup> If an applicant maintains that the official record is incorrect, the applicant has the burden to prove that the official record is incorrect.

To receive a charter halibut permit, an applicant must prove participation through logbook fishing trips in two periods: a qualifying period, which is the sport fishing season for halibut in 2004 and 2005,<sup>20</sup> and a recent participation period, which is the sport fishing season for halibut in 2008.<sup>21</sup>

To receive a non-transferable charter halibut permit, an applicant must have “reported” a minimum of five “bottomfish logbook fishing trips” to ADF&G in one year in the qualifying period (2004 or 2005), and a minimum of five halibut logbook fishing trips in the recent participation period (2008).<sup>22</sup>

To receive a transferable charter halibut permit, an applicant must have “reported” a minimum of fifteen “bottomfish logbook fishing trips” to ADF&G with the same vessel in one year in the qualifying period (2004, 2005), and fifteen halibut logbook fishing trips with the same vessel in the recent participation period (2008).<sup>23</sup>

The regulation expressly defines “bottomfish logbook fishing trip” as follows:

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.<sup>24</sup>

Thus, to be a bottomfish logbook fishing trip, the trip must not only have occurred but must have been reported to ADF&G with one of three pieces of information regarding

<sup>17</sup> Final Rule, 75 Fed. Reg. 554, 554 (Jan. 5, 2010).

<sup>18</sup> 50 C.F.R. § 300.67(f)(5).

<sup>19</sup> Proposed Rule, 74 Fed. Reg. 18,178, 18,183 (Apr. 21, 2009).

<sup>20</sup> 50 C.F.R. § 300.67(f)(6).

<sup>21</sup> 50 C.F.R. § 300.67(f)(7).

<sup>22</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A) & (B).

<sup>23</sup> 50 C.F.R. § 300.67(d)(1)(i)&(ii).

<sup>24</sup> 50 C.F.R. § 300.67(f)(2)(emphasis added).

bottomfish fishing that occurred on the trip: statistical areas or stat areas, boat hours or the number of rods.

In deciding an appeal of the denial of a permit, the function of an appellate officer or administrative judge is determine if the government properly applied the regulations governing the issuance of the permit.

## ANALYSIS

### **Did Appellant show that the official charter halibut record is incorrect and that he reported to ADF&G at least five bottomfish logbook fishing trips during one year of the qualifying period (2004 or 2005)?**

According to the official record, Appellant reported four bottomfish logbook fishing trips in 2004, that is four trips where Appellant reported one of the three pieces of information that makes a trip a bottomfish logbook fishing trip, namely statistical areas or stat areas where the 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. According to the official record, Appellant reported one bottomfish logbook fishing trip in 2005.

Appellant makes three arguments to show that the official record is incorrect. First, Appellant provided a printout from ADF&G of trips that Appellant reported to ADF&G.<sup>25</sup> Appellant's printout agrees with NMFS's official charter halibut record. Appellant's ADF&G printout showed four trips in 2004 where Appellant reported for bottomfish fishing one of these pieces of information: stat areas, boat hours or the number of rods. The ADF&G printout shows those trips occurred on June 28, June 29, June 30 and July 1 and Appellant reported all three pieces of required bottomfish information (stat area, boat hours, number of rods) for each of those trips.

Like the official charter halibut record, Appellant's ADF&G printout shows one trip in 2005 which meets the definition of a bottomfish logbook fishing trip. That trip was on June 2, 2005 and the ADF&G data shows a trip where Appellant (or more precisely, Appellant's captain) reported salmon data (stat area of salmon fishing, boat hours, number of rods, number of salmon caught) and bottomfish data, specifically the stat area for bottomfish fishing (stat area 108600), the number of hours fished (three) and the number of rods fished (eight).<sup>26</sup> Thus, Appellant's printout from ADF&G did not show that NMFS's official charter halibut record is incorrect for either 2004 or 2005.

Second, Appellant states that, before 2006, charter vessel operators did not have to report halibut caught. Appellant points to the "N/A" column – standing for Not Applicable – under "Halibut Kept" and "Halibut Released" in the ADF&G Logbooks from

<sup>25</sup> ADF&G printout of Appellant's logbook fishing trips (submitted by Appellant, July 8, 2010).

<sup>26</sup> ADF&G printout of Appellant's logbook fishing trips (submitted by Appellant, July 8, 2010).

2002 through 2005.<sup>27</sup> Appellant is correct that charter operators did not have to report the number of halibut kept and the number of halibut released from 2002 to 2005 and did have to start reporting that data in 2006.

But this is not a basis to change the official record and order that Appellant receive a permit. The reason is that ADF&G did require vessel operators to record and report information about halibut fishing under bottomfish data in the qualifying period – 2004 and 2005 – and that is why the regulation has a requirement for “bottomfish logbook fishing trips” in the qualifying period and “halibut logbook fishing trips” in 2008. NMFS explained in the proposed rule:

This action proposes additional definitions for a “bottomfish logbook fishing trip” and a “halibut logbook fishing trip.” To document participation in 2004 and 2005, an applicant must prove bottomfish logbook fishing trips, and to prove participation in the recent participation year an applicant must prove halibut logbook fishing trips. The [North Pacific Fishery Management] Council anticipated the distinction between these terms in its moratorium motion. The reason for this distinction is that in 2004 and 2005, ADF&G did not require businesses to report the number of halibut that were kept, or kept and released, for each logbook fishing trip. ADF&G required businesses to report bottomfish effort for each logbook fishing trip. The bottomfish effort data was (1) the State statistical area where bottomfish fishing occurred, (2) the boat hours that the vessel engaged in bottomfish fishing and (3) the number of rods used from the vessel in bottomfish fishing. ADF&G attached instructions to each logbook that stated that bottomfish fishing effort included effort targeting halibut. Therefore, for purposes of this action, NMFS would count any of these three types of bottomfish information about a trip in the qualifying period as a bottomfish logbook fishing trip for purposes of qualifying for one or more permit(s). . . .

In 2006, ADF&G changed its required logbook report to specify halibut data for each logbook fishing trip. The required logbook data included the number of halibut kept, the number released, and the boat hours that the vessel engaged in bottomfish fishing. Because these data will be more specific to halibut in the recent participation year, NMFS intends to rely on the halibut logbook data as proof of an applicant’s participation during the recent participation year.<sup>28</sup>

ADF&G’s instructions explaining how to complete the Saltwater Charter Vessel Logbooks for the years 2002 through 2011 are displayed on the NMFS Alaska Region

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<sup>27</sup> Letter from Appellant to NMFS (Nov. 8, 2010). ADF&G printout of Appellant’s logbook fishing trips for 2001, 2002, 2003, 2006, 2007 (submitted by Appellant, Nov. 16, 2010). The ADF&G printout for 2001 did have “halibut kept” and “halibut released” data but not for 2002, 2003, 2004 and 2005.

<sup>28</sup> Proposed Rule, 74 Fed Reg. 18,178, 18,185 (Apr. 21, 2009).

website.<sup>29</sup> With respect to recording 2005 bottomfish trips, those instructions provided as follows:<sup>30</sup>

<b>BOTTOMFISH</b>	
<b>Primary Stat Area (Incl. Halibut)</b>	The 6-digit area code where you caught most of the bottomfish on this trip. If you fished for bottomfish, but caught none, write the 6-digit code for the location fished the most time on this date and trip.
<b>Maximum Rods Fished</b>	The maximum number of rods/lines fished when targeting bottomfish ( <b>incl. halibut</b> )....
<b>No. Boat Hours Fished</b>	The number of boat hours that at least one rod/line was targeting bottomfish ( <b>incl. halibut</b> )....
<b>Fish Kept &amp; Released</b>	The total number of fish kept and released by client and crew.... <b>Halibut kept and released is no longer being collected in logbooks, but effort continues to be collected....</b>
<b>SPECIAL NOTES AND INSTRUCTIONS</b>	
<b>“Halibut”</b>	The number of halibut kept and released is no longer requested in the logbook. However, we ask that you continue to <b>record your effort</b> . Complete the first five columns on the far left of each logbook page and the first three columns under the Bottomfish section (stat area, no. rods, and boat hrs).

Instructions for the 2004 Logbook are similar and state that vessel operators should include halibut fishing information when they report stat areas, rods fished and boat hours for bottomfish.<sup>31</sup> Thus, the fact that Appellant did not have to report halibut specifically in 2004 and 2005 is not a reason to change the official record of Appellant’s participation for either of those years.

Third, Appellant states that if the trips were not properly reported, it was because Captain did not understand that he was supposed to report halibut fishing under bottomfish fishing and that ADF&G staff should have told him that when he turned in his logbooks. ADF&G distributed instructions with each logbook. The years 2002 and 2003 were also years when charter operators also did not have to report halibut specifically. From ADF&G printouts, he reported six bottomfish logbook fishing trips –

<sup>29</sup> ADF&G Saltwater Logbooks for the years 2002 through 2011 are displayed on the NMFS, Alaska Region, website at: <http://alaskafisheries.noaa.gov/appeals/default.htm>

<sup>30</sup> 2005 ADF&G Saltwater Charter Vessel Logbook Instructions at iv (emphasis in original)

<sup>31</sup> 2004 ADF&G Charter Vessel Logbook Instructions at iv.

trips with information on bottomfish fishing by stat area, number of rods or number of boat hours – in 2002 and twenty-seven bottomfish logbook fishing trips in 2003.<sup>32</sup>

In 2004, ADF&G records only show Appellant reporting six trips total: four trips that were reported as bottomfish trips and two trips that had only salmon data.<sup>33</sup> Appellant's ADF&G records for 2005 show a different pattern. ADF&G records show twenty logbook trips by Appellant: nineteen trips where Appellant reported only salmon data and one trip where he reported salmon and bottomfish information.<sup>34</sup> It is not clear from this record why Appellant's reported bottomfish trips in 2004 and 2005 are so much lower than in 2003 and somewhat lower than 2002. And if it were material to resolving this appeal, I would have held a hearing to determine those facts.

But assuming that Captain misunderstood the reporting requirements for 2004 and 2005 – and that well could have happened – I conclude that the charter halibut regulation does not give me the authority to evaluate why an applicant did not report a trip at all to ADF&G, why an applicant did not report halibut fishing on a trip, determine whether the reason was valid and credit some unreported trips and not others. The regulation specifically requires that NMFS award permits based on specified numbers of "bottomfish logbook fishing trips" that were "reported" in the qualifying period.<sup>35</sup> The regulation specifically defines the term to mean that the trip was reported to ADF&G with one of three pieces of information: stat area where bottomfish fishing occurred, number of rods used in bottomfish fishing or number of boat hours spent in bottomfishing.

The regulatory history reinforces the conclusion that I do not have authority to excuse lack of reporting of charter trips to ADF&G, particularly when the reason is that the applicant did not understand the requirement to report halibut fishing under bottomfish fishing. NMFS adopted the definition of "bottomfish logbook fishing trip" specifically against the backdrop of the fact that, in 2004 and 2005, charter operators did not have to report halibut but did have to report halibut effort under bottomfish fishing.<sup>36</sup> In the proposed rule, NMFS also spoke to the general question whether an applicant could add trips to the official charter halibut record if the applicant did not report them to ADF&G when the trips occurred:

A logbook fishing trip would be an event that was reported to ADF&G in a logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip. The required time limit differed in minor ways in 2004, 2005, 2007 and 2008; and depended on when the trip occurred; however, the latest date for reporting a trip was January 15 of the year after it occurred. If a trip was not reported within those time limits,

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<sup>32</sup> ADF&G printout of Appellant's logbook fishing trips for 2002, 2003 (submitted by Appellant, Nov. 16, 2010).

<sup>33</sup> ADF&G printout of Appellant's logbook fishing trips for 2004, 2005 (submitted by Appellant, July 8, 2010).

<sup>34</sup> ADF&G printout of Appellant's logbook fishing trips for 2004, 2005 (submitted by Appellant, July 8, 2010).

<sup>35</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A).

<sup>36</sup> Proposed Rule, 74 Fed Reg. 18,178, 18,185 (Apr. 21, 2009)(quoted at page 6 *supra*).

NMFS would not consider it a logbook fishing trip for purposes of this proposed rule, and it would not serve as the basis for NMFS to issue a charter halibut permit. *Hence, a permit applicant could not add a trip to the official record years after the trip should have been reported to the State.*<sup>37</sup>

In the commentary to the final rule, NMFS restated that proposition:

As stated above, the basic unit of participation for receiving a charter halibut permit will be a logbook fishing trip, which is a trip that was reported to ADF&G in a saltwater charter logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip. *If a trip was not reported within those time limits, NMFS will not consider it a logbook fishing trip for purposes of a charter halibut permit application.*<sup>38</sup>

Thus, even if more trips occurred in 2004 or 2005 than are contained in the official record where anglers from Appellant's vessel caught, or tried to catch halibut, the charter halibut regulation does not allow NMFS to consider those trips because Appellant did not report them to ADF&G as a bottomfish trip.

Finally, Appellant states that he cannot understand why he has so few reported bottomfish trips in 2004 and 2005 and may be implying that Captain submitted logbook reports to ADF&G in 2004 and 2005 that ADF&G did not properly record. Appellant has not submitted any documentary evidence that he reported trips to ADF&G that are not contained in the official record. Each page of the ADF&G Logbook has an original, which is submitted to ADF&G, and a pink carbon copy, which the vessel operator can retain for their records. Appellant has not submitted any carbon copies of any logbook trips in 2004 or 2005 that he submitted to ADF&G that are not contained in the official charter halibut record. Appellant did not provide any written statements identifying specific trips that Captain submitted to ADF&G that are not contained in the official charter halibut record. And Appellant has noted that he and Captain were confused as to the requirement to report halibut as bottomfish effort in 2004 and 2005.

Further, ADF&G has numerous trips that Appellant reported in other years: 2002, 2003, 2006, 2007 and 2008. I apply a presumption of regularity to actions of government agencies.<sup>39</sup> Appellant has not presented sufficient evidence to show that he submitted logbook reports for bottomfish trips in 2004 or 2005 that are not reflected in ADF&G records. I conclude that Appellant has not shown that the official record is incorrect and that he took five bottomfish logbook fishing trips in 2004 or 2005. I therefore uphold the IAD that is the subject of this appeal.

<sup>37</sup> Proposed Rule, 74 Fed. Reg. 18,178, 18,185 (Apr. 21, 2009)(emphasis added).

<sup>38</sup> Final Rule, 75 Fed. Reg. 554, 556 (Jan. 5, 2010)(emphasis added).

<sup>39</sup> It is well-established that "a presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." *United States v. Chem. Found.*, 272 U.S. 1, 14 -15 (1926). "Administrative law has adopted a presumption of regularity for official decisions." C. Koch, Jr., *Administrative Law and Practice* § 1.20 at [12] at 42 (3d. ed. 2010).

## CONCLUSIONS OF LAW

1. An applicant for a charter halibut permit may not meet the participation requirement in the qualifying period with a charter trip unless it was a bottomfish logbook fishing trip. Pursuant to 50 C.F.R. § 300.67(f)(2), a bottomfish logbook fishing trip means a trip for which the applicant reported to ADF&G one of the following pieces of information about the trip: statistical area where bottomfish fishing occurred, number of boat hours the vessel engaged in bottomfish fishing or the number of rods used from the vessel in bottomfish fishing.
2. The charter halibut regulations do not give an appellate officer the authority to evaluate why an applicant took trips but did not report them to ADF&G, or took trips but did not report halibut fishing and, based on that evaluation, credit some trips that were not reported to ADF&G and deny credit for other trips.
3. Appellant did not show that the official charter halibut record was incorrect and that he reported five bottomfish logbook fishing trips during one year of the qualifying period (2004 or 2005) to ADF&G.
4. Appellant does not meet the minimum participation requirement in the qualifying period for a non-transferable or transferable charter halibut permit.

## ORDER

The IAD that is the subject of this appeal is AFFIRMED. This decision takes effect on December 15, 2011, unless by that date the Regional Administrator orders review of the Decision.

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 November 25, 2011, the tenth day after the date of this Decision. 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 issuance of a Decision on Reconsideration.

  
Mary Alice McKeen  
Administrative Judge

Date issued: November 15, 2011