

regulations state an applicant for a charter halibut permit that meets the participation requirement for the qualifying period, but does not meet the participation requirement for the recent participation period, may receive one or more charter halibut permits if:

The applicant had a specific intent to operate a charter halibut fishing business in the recent participation period;

The applicant's specific intent was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the owner of the charter halibut fishing business; and

(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;

The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and

The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in the recent participation period.²

There are no provisions in the CHLAP regulations stating an unavoidable circumstance only need thwart an appellant's ability to operate their charter fishing business at the level they intended. As stated in the Decision, in 2008 Appellants continued to operate their charter fishing business despite their clients' injuries.³ It is not reasonable to conclude therefore that Appellants' clients' injuries in 2008 thwarted their specific intent to operate their charter halibut business that year.

Appellants also argue in their Motion that the weather in 2008 affected their ability to meet the recent participation requirements. As stated in the Decision, bad weather in Appellants' area is not a unique circumstance.⁴ Bad weather, therefore, did not thwart Appellants' specific intent to operate a charter halibut business in 2008.

Although Appellants argue in their Motion that their business was fully booked in 2008, and that it was therefore not possible for them to book additional guests that year without overbooking, as stated above, the Appellants' specific intent to operate their charter halibut business was not thwarted in 2008. It is therefore irrelevant whether their business was fully booked that year.

Appellants also argue in their Motion that the Decision misconceives the appropriate application of the term "thwarted". Specifically, Appellants argue this term should be

² 50 C.F.R. § 300.67(g)(1)(i)-(iv).

³ Decision page 6.

⁴ Decision page 6.

applied as hindering rather than preventing a specific intent to operate a charter halibut business. As stated above, the CHLAP regulations do not support such a proposition.

Although Appellants address in their Motion whether they took all reasonable steps to overcome unavoidable circumstances that prevented them from operating a charter halibut fishing business in the recent participation period, the above analysis is dispositive and there is no need to analyze this element of their claim.

In summary, on reconsideration Appellants do not raise an issue that was overlooked in rendering the Decision. Appellants do not qualify under the unavoidable circumstance provisions of the CHLAP regulations to receive a CHP. Appellants have not proven all of the necessary elements to prevail in an unavoidable circumstance claim pursuant to 50 C.F.R. § 300.67(g)(1)(i)-(iv).

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

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Steven Goodman
Administrative Judge

Date Issued: February 14, 2012

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