









License.<sup>21</sup> This license authorized the logbook fishing trips that are used to meet the minimum participation requirements to qualify for a CHP.<sup>22</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 in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip  
 A “bottomfish logbook fishing trip” means 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>23</sup>

A “halibut logbook fishing tip” means a logbook fishing trip in the recent participation period that was reported to the State of Alaska 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>24</sup>

Minimum participation requirements to qualify for a charter halibut permit 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>25</sup>

If an applicant for a CHP cannot meet the participation requirements in one period, but does meet the participation requirements for the other period, then the applicant may still be eligible for a CHP under the exception to the participation requirements known as the “unavoidable circumstances” rule.<sup>26</sup>

Under the unavoidable circumstances rule as it applies to this case, an applicant for a CHP may be eligible for a permit if:

- (1) he met the participation requirements for 2008, but not for 2004 or 2005;
- (2) he specifically intended to operate a charter halibut fishing business in 2004 or 2005;

<sup>21</sup> An ADF&G Business Owner License includes a business registration, a sport fish business owner license, a sport fish business license, and an ADF&G business license. 50 C.F.R. § 300.67(b)(3).

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

<sup>23</sup> 50 C.F.R. § 300.67(f)(2).

<sup>24</sup> 50 C.F.R. § 300.67(f)(3).

<sup>25</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A)-(B), (f)(6)-(7).

<sup>26</sup> See 50 C.F.R. § 300.67(g)(1)-(2).

(3) his intent was thwarted by an unavoidable, unique, unforeseen, and reasonably unforeseeable circumstance that actually occurred, and;

(4) he took all reasonable steps to overcome the unavoidable circumstance.

If Appellant proves the requirements of an unavoidable circumstance claim as outlined above, then he will receive a CHP.<sup>27</sup>

## ANALYSIS

The first issue I must resolve is whether Appellants met the minimum participation requirements necessary to qualify for a CHP. This requires Appellants to meet the participation requirements for the qualifying period and the recent period. Appellants concede they do not meet the participation requirements for the qualifying period.<sup>28</sup> As the regulations governing CHLAP require Appellants to meet the participation requirements for both the recent period and the qualifying period, Appellants do not qualify for a CHP.

Appellants may, however, qualify for a CHP under the “unavoidable circumstances” rule. For Appellants to successfully assert the “unavoidable circumstances” rule, they must have met the minimum participation requirements for either the qualifying or recent participation period. As Appellants did not begin operations until 2006, Appellants must produce evidence that they met the minimum participation requirements for the recent participation period of 2008.

For Appellants to show they met the minimum participation requirements, they must prove they were issued an ADF&G Business Owner License in 2008.<sup>29</sup> Appellants claim Agent applied for the 2008 Business Owner License on their behalf.

There are facts that do not support Appellants’ claim that Agent applied for the 2008 License on their behalf. Specifically, Agent’s name is listed on the 2008 ADF&G License as the person applying for that license; included in the 2008 ADF&G License application was State of Alaska Business License Number [REDACTED], the License Number for [REDACTED]; and Agent is the sole proprietor of [REDACTED].

However, several factors weigh in favor of Appellants’ claim that Agent applied for the 2008 ADF&G License on their behalf. First, the business name on the 2008 ADF&G application is [REDACTED]. Second, Agent’s signature does not appear on the 2008 ADF&G License application. Third, Agent was not in Alaska at the time the 2008 ADF&G License application was submitted to ADF&G. Fourth, Appellants’

<sup>27</sup> 50 C.F.R. § 300.67(g)(2)(v).

<sup>28</sup> Pleadings Tab, Appellant’s letter of appeal, received December 22, 2010.

<sup>29</sup> 50 C.F.R. § 300.67(b)(1)(ii).



## CONCLUSIONS OF LAW

RAM correctly denied Appellants' application for a CHP. Appellants did not meet the minimum participation requirements to qualify for a CHP pursuant to 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B) since Appellants did not meet the minimum participation requirement for the qualifying period of 2004 or 2005.

The unavoidable circumstance provisions of the CHLAP regulations do not qualify Appellants 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)(2)(i)-(iv).

The IAD is consistent with CHLAP regulations.

## ORDER

The NAO Decision dated October 17, 2011, is vacated by this Decision on Remand. The IAD dated November 29, 2012, is upheld. This decision is effective thirty (30) days from the date issued<sup>31</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 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 Daylight Savings Time, on March 26, 2012, 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 the issuance of a Decision on Reconsideration.



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Steven Goodman  
Administrative Judge

Date Issued: March 15, 2012

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<sup>31</sup> 50 C.F.R. § 679.43(k) and (o).