

In re Application of [REDACTED]

NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
ALASKA REGIONAL OFFICE

In re Application of

[REDACTED]

Appellant.

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Appeal No. 10-0027

REGIONAL ADMINISTRATOR’S FINAL DECISION GRANTING APPELLANT A
CHARTER HALIBUT LIMITED ACCESS PROGRAM PERMIT

In enacting regulations to implement the Charter Halibut Limited Access Program, the National Marine Fisheries Service (NMFS) provided a military service exception to the general rule that one had to have registered a certain amount of halibut during certain time periods to obtain a permit. To qualify for the exception, Appellant [REDACTED] had to demonstrate that he “had the specific intent to operate a charter halibut fishing business that was thwarted by [his] order to report for military service.” 50 C.F.R. § 300.67(g)(3)(ii). Relying on this provision, the NAO ruled that no “weight should be afforded to Appellant’s evidence of his specific intent . . . after his receipt of orders to report for military service on December 22, 2002.” NAO Decision at 7.

The NAO erred in applying the provision quoted above to discount post-service evidence submitted to demonstrate pre-service intent to operate a fishing business. The NAO appears to have confused the requirement that the applicant’s specific intent exist prior to his order to report for military service with the relevance of post-service order evidence of such intent. A hypothetical illustrates this error: if a person in 2002 intends to commence a charter halibut fishing business and obtains an Alaska Nautical Training School Certificate, but is thereafter ordered to report for military service and, while in service, buys a boat, buys a lodge, obtains an Alaska Department of Fish and Game (ADF&G) Business Owner License, spends \$25,000 per year on marketing, directs all clients to other businesses while he remains in the service, and then after concluding his service begins operating his own business in 2007, it would be wrong to conclude that that person lacked the specific intent to operate a charter halibut fishing business before ordered into service simply because everything other than the training certificate occurred after he was ordered into service. Rather, the better view is to say that he had the specific intent to operate the business and those post-order events are indicia of such intent, *i.e.*, they are evidence that, but for his order into military service, he would have commenced his business operations around 2002. That hypothetical, of course, is somewhat divorced from reality and assumes someone has the time and means to take all of those actions.

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This case is more typical. Here, the U.S. Coast Guard ordered [REDACTED] to report for military service in Oregon and [REDACTED] entered and remained in such service between December 22, 2002 and April 4, 2006. There was testimonial evidence that, prior to reporting for duty, [REDACTED] intended to operate a charter halibut fishing business. [REDACTED] also provided corroborating documentary evidence showing that he obtained an Alaska Nautical Training School Certificate in November 2002 to further his goal.

The other evidence in this case occurred after [REDACTED] entered the service, but each one supports the conclusion that he had the intent to operate a charter fishing business back in 2002 and, but for the order to enter military service, he would have commenced such operations around that time. The evidence shows that, while in the service, [REDACTED] purchased his charter halibut vessel in 2003 and obtained a Merchant Marine Officer Master's License in 2004. Finally, the evidence shows that upon discharge, [REDACTED] promptly obtained an ADF&G Business Owner License and began operating his business in 2007, the following season.

In light of these facts, I conclude that [REDACTED] demonstrated that he had the specific intent to operate a charter halibut fishing business in 2002 and was thwarted by orders to report for military service since, but for entering into such service, [REDACTED] would have commenced his business in 2003 or 2004. Therefore, [REDACTED] satisfies the conditions of the military service exemption.

In 2008, [REDACTED] recorded fourteen (14) logbook fishing trips. Accordingly, [REDACTED] qualifies for a Charter Halibut Limited Access Program permit, and pursuant to 50 C.F.R. §§ 300.67(d) and (e)(6), [REDACTED] is entitled to a non-transferable permit with an angler endorsement of six (6).

For the foregoing reasons, the decision of the NAO is reversed and RAM is instructed to issue [REDACTED] a Charter Halibut Limited Access Program permit consistent with this opinion.

[REDACTED]

for
James W. Balsiger, Ph.D.
Regional Administrator

March 23, 2012
Date