

ANALYSIS

To satisfy the minimum qualifications for a charter halibut permit, a person must have been a person to whom the ADF&G issued a Business Owner License that authorized logbook fishing trips.⁵ Further, the holder of such a license must have reported a minimum of five bottomfish logbook fishing trips in one year in the qualifying period (2004/2005)⁶ and a minimum of five halibut logbook fishing trips in the recent participation period (2008).⁷ ██████████ was not issued such a license in either period, nor did he submit any logbook data indicating charter fishing for halibut had occurred under the authority of such a license(s). Therefore, ██████████ does not meet the minimum qualifications for a charter halibut permit.

However, the regulations have exceptions to meeting the participation requirements in either the qualifying period or the recent participation year. Under the unavoidable circumstance regulation, if an applicant meets the minimum participation requirement in the *qualifying* period (2004/2005), *but not in the recent participation* period, the applicant may claim to meet the requirements in the unavoidable circumstance regulation as a means of meeting the recent participation period requirement (2008).⁸ That is, if the applicant meets the requirements of the unavoidable circumstance regulation for the recent participation period, the applicant may be treated as though he or she had participated in the recent participation period.

If an applicant meets the minimum participation requirement in the *recent participation* period (2008), *but not in the qualifying* period (2004/2005), the applicant may claim to meet the requirements in the unavoidable circumstance regulation as a means of meeting the participation requirements for the qualifying period (2004/2005).⁹ If the applicant meets the requirements of the unavoidable circumstance regulation for the qualifying period, the applicant may be treated as though he or she participated in the qualifying period.

The exceptions only allow the substitution of an unavoidable circumstance for either the qualifying period *or* recent participation period.¹⁰ In other words, to take advantage of the unavoidable circumstance regulation, the applicant must have participated in either the qualifying period or recent period. Since ██████████ participated in neither period, he is not eligible for a charter halibut permit pursuant to the unavoidable circumstance regulation.

██████████ states that his intent to participate during the relevant years (2004, 2005, and 2008) was prevented by the State of Alaska while he worked as an ██████████, a situation he likens to serving in the U.S. military. He comments: “The application for Charter

⁵ 50 C.F.R. § 300.67(b)(1)(ii).

⁶ 50 C.F.R. § 300.67(b)(1)(ii)(A). The qualifying period is the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2004 and 2005. 50 C.F.R. § 300.67(b)(1)(ii)(f)(6).

⁷ 50 C.F.R. § 300.67(b)(1)(ii)(B). The recent participation period is the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2008. 50 C.F.R. § 300.67(b)(1)(ii)(f)(7).

⁸ 50 C.F.R. § 300.67(g)(1).

⁹ 50 C.F.R. § 300.67(g)(2).

¹⁰ 50 C.F.R. § 300.67(g)(1)&(2).

Halibut Permits for IPHC Regulatory Areas 2C and 3A allows for a military exemption, and I feel that my unique situation more than meets the military service claim requirements. Serving the state of Alaska should not penalize me by excluding me indefinitely from a fishery that I have had every intention of working in.”

██████████ was a member of the ██████████ during the relevant time periods (2004, 2005, and 2008), and not a member of the military, so the military service provision 50 C.F.R. § 300.67(g)(3) does not apply to him. The military service provision only applies to military personnel who actually participated in the recent participation period (2008) and who were on active duty military status during the qualifying period (2004, 2005). ██████████ has not presented evidence proving he was in the military during the relevant time period; therefore, he is not eligible for a charter halibut permit based on the military service provision.

FINDINGS OF FACT

1. ██████████ is not a person to whom the Alaska Department of Fish and Game issued a Business Owner license during either the qualifying period or the recent participation period.
2. No logbook fishing trips were reported under a Business Owner License issued to ██████████ in either the qualifying period or the recent participation year.

CONCLUSIONS OF LAW

1. An applicant may not claim unavoidable circumstances for both the qualifying period and the recent participation year.
2. ██████████ does not satisfy the minimum qualifications for a charter halibut permit.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This decision takes effect on January 20, 2011, unless by that date the Regional Administrator orders review of the Decision.

The 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 the tenth day after the date of this Decision, January 3, 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 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.



Philip J. Smith
Administrative Judge

Reviewed and approved:



For

Eileen Jones
Chief Administrative Judge