

ISSUE

Does [REDACTED] satisfy the minimum qualifications for a charter halibut permit?

ANALYSIS

To satisfy the minimum qualifications and to be issued 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.⁷ 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 or 2005)⁸ and a minimum of five halibut logbook fishing trips in the recent participation period (2008).⁹ [REDACTED] was never issued such a license, nor did he submit any logbook data indicating charter fishing for halibut had occurred under the authority of such a license.

The regulations have an exception to meeting the participation requirements in both the qualifying period and the recent participation year. 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 for the recent participation period (2008).¹⁰ If the applicant meets the requirements of the unavoidable circumstance regulation for the recent participation period, the applicant can be treated as though he or she 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 for the qualifying period (2004/2005).¹¹ If the applicant meets the requirements of the unavoidable circumstance regulation for the qualifying period, the applicant can be treated as though he or she participated in the qualifying period.

But the regulations do not allow an applicant to claim unavoidable circumstances for *both* the qualifying period and the recent participation period.¹² The applicant must have participated in either the qualifying period or the recent participation period.

[REDACTED] states that he could not get accurate information in 2007 and 2008 from staff of the North Pacific Fishery Management Council or the Alaska Department of Fish and Game as to

⁷ 50 C.F.R. § 300.67(b)(1)(ii).

⁸ 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).

⁹ 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).

¹⁰ 50 C.F.R. § 300.67(g)(1).

¹¹ 50 C.F.R. § 300.67(g)(2).

¹² 50 C.F.R. § 300.67(g)(1) & (2).

what the requirements for a charter halibut permit would be.¹³ He also states that he was trying to get a boat and start his own charter halibut fishing business in 2008.¹⁴ Assuming that the facts, as stated by ██████████ are true, and assuming, for purposes of argument, that ██████████ could prove he meets the unavoidable circumstance regulation for 2008, ██████████ did not participate in the qualifying period (2004/2005). To receive a charter halibut permit, an applicant must have participated in either the qualifying period or the recent participation period at the minimum participation level, which is five reported logbook fishing trips. An applicant cannot claim unavoidable circumstances for both the qualifying period and the recent participation period.

██████████ was a member of the U.S. Armed Forces and was discharged from the Marines in May ██████████.¹⁵ The regulations have a special provision for applicants ordered to report for active duty military service during the qualifying period (2004/2005).¹⁶ But the serviceperson must have met the recent participation requirement, which means at least five halibut logbook fishing trips in 2008 were reported under the authority of his or her ADFG Business Owner License.¹⁷ ██████████ did not meet this requirement.

██████████ states that he has served for a number of years as a captain (vessel operator) in the charter halibut fishery on boats owned by other people. ██████████ submitted letters from a number of persons testifying to the quality of his work as a captain and sport fishing guide.¹⁸ ██████████ can still participate in the fishery in this capacity.

██████████ states that it was his dream and intent to own his own boat and own his own charter halibut business and that he will not be able to afford to buy a charter halibut permit. It is true that now, to operate a charter halibut business, he will have to obtain a federal charter halibut permit and that, in the past, he would not have had to do that. But that is the result of the Charter Halibut Limited Access Program adopted by the North Pacific Fishery Management Council and approved by the Secretary of Commerce.¹⁹

██████████ is aware that he can not qualify for a charter halibut permit on the basis of his personal qualifications. Nevertheless, he asks that he be issued a non-transferable charter halibut permit. The Office of Administrative Appeals has no authority to provide ██████████ with the relief he seeks. Administrative judges must apply the regulations as written. ██████████ objections go to the underlying policy decisions in the Charter Halibut Limited Access Program, as codified in the regulations for that program.²⁰

¹³ Statement for a Halibut Permit by ██████████ (received by RAM, April 26, 2010).

¹⁴ *Id.*; Letter from ██████████ to RAM (received Mar. 12, 2010).

¹⁵ Evidence of Military Service, submitted by ██████████ (received by RAM, April 26, 2010).

¹⁶ 50 C.F.R. § 300.67(g)(3)(i).

¹⁷ 50 C.F.R. § 300.67(g)(3).

¹⁸ Statement of ██████████ (received by RAM, April 26, 2010)(letters attached)

¹⁹ Final Rule, 75 Fed. Reg. 599 (Jan. 5, 2010).

²⁰ 50 C.F.R. § 300.61, § 300.66, § 300.67.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

1. An applicant cannot claim unavoidable circumstances for both the qualifying period and the recent participation year.
2. [REDACTED] 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 August 23, 2010, 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 Time, on the tenth day after the date of this Decision, August 2, 2010. 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.

[REDACTED]
Philip J. Smith
Administrative Judge

Reviewed and approved:

[REDACTED]
Mary Alice McKeen
Chief Administrative Judge (acting)