

The undersigned appellate officers issued a Decision on July 27, 2010, which concluded that [REDACTED] met the requirements to receive a transferable charter halibut with an angler endorsement of six. The Decision specified a ten-day period for the appellant or RAM to seek reconsideration. Neither the appellant nor RAM sought reconsideration.

On our own motion, we issued a notice of reconsideration to review the proper interpretation of the unavoidable circumstance regulation for applicants that did not participate in the recent participation period, 50 C.F.R. § 300.67(g)(1). The particular issue was the proper interpretation of section (v) of 50 C.F.R. § 300.67(g)(1), specifically how NMFS determines the type of charter halibut permit an applicant would receive, and the angler endorsement on the permit, if the applicant proved it faced unavoidable circumstances in the recent participation period, as specified in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(1).

In response to the Notice of Reconsideration, [REDACTED] submitted additional evidence as to his likely participation in the recent participation period, if he had not faced unavoidable circumstances in 2008. We conclude that the record has sufficient information on which to render a decision, as required by 50 C.F.R. § 679.43(g)(2). We therefore close the record and issue this decision.

SUMMARY OF DECISION ON RECONSIDERATION

The Decision on Reconsideration restates the findings and conclusions in the original Decision that [REDACTED] did not participate in the recent period due to unavoidable circumstances and that he meets the requirements of sections (i) through (iv) of 50 C.F.R. § 300.67(g)(1).

After careful consideration, we conclude that the original Decision correctly interpreted section (v) of 50 C.F.R. § 300.67(g)(1). If an applicant proves it faced an unavoidable circumstance in the recent participation period, as required by sections (i) through (iv) of 50 C.F.R. § 300.67(g)(1), section (v) of that same regulation directs NMFS to award the applicant a transferable permit, if the applicant meets the participation requirement for a transferable permit in the qualifying period (2004, 2005). [REDACTED] reported fifteen or more halibut logbook fishing trips in one year in the qualifying period with the same vessel and the highest number of anglers on any of those trips was six. [REDACTED] therefore meets the requirements for a transferable charter halibut permit with an angler endorsement of six.

ISSUES

1. Does [REDACTED] meet the requirements in sections (i) through (iv) of the unavoidable circumstance regulation for applicants who did not meet the minimum participation requirement in the recent participation period (2008)?

of this section"); 50 C.F.R. § 300.67(h)(6) ("An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to § 679.43 of this title."). See Final Rule, 75 Fed. Reg. 554, 597 (Jan. 5, 2010), Change 19.

2. If so, does [REDACTED] meet the requirement in section (v) for a transferable permit?
3. If so, what is the angler endorsement on [REDACTED] permit?

REGULATION AT ISSUE

50 C.F.R. § 300.67(g) *Unavoidable circumstance*. Unavoidable circumstance claims must be made pursuant to paragraph (h)(6) of this section, and will be limited to persons who would be excluded from the charter halibut fishery entirely unless their unavoidable circumstance is recognized. This unavoidable circumstance provision cannot be used to upgrade the number of permits issued or to change a non-transferable permit to a transferable permit, and is limited to the following circumstances.

(1) *Recent participation period*. 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 permits if the applicant proves paragraphs (g)(1)(i) through (iv) of this section as follows:

- (i) The applicant had a specific intent to operate a charter halibut fishing business in the recent participation period;
 - (ii) 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;
 - (iii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and
 - (iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in at last one year of the qualifying period.
- (v) If the applicant proves the foregoing (*see* paragraphs (g)(1)(i) through (iv) of this section), the applicant will receive the number of transferable and non-transferable permits and the angler endorsements on these permits that result from the application of criteria in paragraphs (b), (c), (d), (e), and (f) of this section.⁵

An applicant must satisfy each section of the regulation to receive a permit based on this regulation. An applicant must prove any fact in support of its claim by a preponderance of evidence in the record.

⁵ This regulation has a second part: for applicants who did not participate in the qualifying period due to unavoidable circumstances. 50 C.F.R. § 300.67(g)(2).

ANALYSIS

1. Does [REDACTED] meet the requirements in sections (i) through (iv) of the unavoidable circumstance regulation for applicants who did not meet the minimum participation requirement in the recent participation period, 50 C.F.R. § 300.67(g)(1)? Yes.

Section (i). Did [REDACTED] have a specific intent to operate a charter halibut fishing business in 2008? Yes.

To demonstrate his intent to conduct charter activities during 2008, [REDACTED] submitted the following evidence:⁶

- An invoice from [REDACTED] dated January 24, 2008, for seasonal moorage (4/1/08 – 10/1/08) for the [REDACTED]
- an invoice, dated May 28, 2008, from [REDACTED] indicating expenses for internet and yellow page advertisements;
- a copy of Alaska Business License [REDACTED] [REDACTED] valid from January 4, 2007, through December 31, 2008;
- a copy of the “2008 Saltwater Charter Logbook and Vessel Registration” for the vessel [REDACTED] issued by the Alaska Department of Fish and Game; and
- a copy of the “Sport Fishing Guide and Business” license for [REDACTED] issued by the ADF&G, validated on April 30, 2008.

Taken together, this documentation demonstrates that [REDACTED] had taken all necessary steps to conduct his charter business throughout 2008. If he had no such intent, he would have had no need for the moorage, licenses, and logbooks, and he would not have advertised for customers. We find by a preponderance of the evidence that [REDACTED] held a specific intent to participate in the charter halibut fishery in 2008.

Section ii. Was [REDACTED] intent to operate a charter halibut fishing business thwarted by an event, or series of events, that were unavoidable, unique, unforeseen, and reasonably unforeseeable? Yes.

The claimed unavoidable circumstances were two, successive mechanical problems with the [REDACTED] [REDACTED] each of which required substantial repairs. In support of his claim that the boat had serious mechanical problems, [REDACTED] provided the following documentation:

⁶ Summarized herein. The complete documents are in the written record.

- An invoice from [REDACTED] showing that the [REDACTED] vessel, the [REDACTED] was hauled out (removed from the water) on June 23, 2008, and re-launched on July 22, 2008;
- another invoice from [REDACTED] showing the [REDACTED] was again hauled out on July 24, 2008, and not re-launched until September 19, 2008;
- an invoice from [REDACTED] (# 2676), dated July 9, 2008, billing for a used Perkins engine and associated parts, priority mail shipping charges, and labor for installation;
- an invoice from [REDACTED] (# 549), dated July 18, 2008, billing for parts and labor for wiring the batteries on [REDACTED];
- another invoice from [REDACTED] (# 2838), dated September 8, 2008, billing for a shaft seal, bushing, sea cock, and engine alignment; and
- an invoice from [REDACTED] (# 02950), dated August 25, 2008, billing for materials and labor costs associated with disassembling the starboard shaft log and replacing it with a new one.

[REDACTED] had taken the requisite steps to prepare to operate his charter halibut fishing business in early 2008. While engaging in a test fishing trip in early June of 2008, his starboard engine failed, a circumstance that surely thwarted his intent to operate his charter halibut fishing business. His vessel was hauled, a replacement engine was installed, and the vessel was re-launched on July 22, 2008.

But that did not end his woes. When the vessel was relaunched, it was discovered that it was necessary to effect repairs on the starboard shaft, coupler and shaft log. On July 24, 2008, after only one day in the water, the vessel was hauled once again. While out of the water, repairs were made and the shaft log was replaced. The vessel was not relaunched until September 19, 2008.

We find that the mechanical problems were unavoidable. The mechanical problems were not a problem that affected the industry, or a segment of the industry, and therefore were unique to [REDACTED]. The mechanical problems were unforeseen and reasonably unforeseeable.

We find, by a preponderance of the evidence that the above circumstances, amply documented in the record, thwarted [REDACTED] intent to operate his halibut charter fishing business in 2008.

Section iii. Did the circumstances that thwarted [REDACTED] intention to operate a charter halibut fishing business actually occur? Yes.

The documentation of the circumstances, as summarized above, is entirely consistent with [REDACTED] contention that these circumstances occurred. The documentation is derived from multiple sources and is consistent. Therefore, we find that the circumstances actually occurred.

Section iv. Did [REDACTED] take all reasonable steps to overcome the circumstance? Yes.

When confronted with engine problems, [REDACTED] immediately had the vessel hauled and worked on. The engine was replaced and the vessel was relaunched. [REDACTED] had every reason to believe that the problem was solved. However, it became apparent almost immediately that there were serious problems with the starboard engine's shaft, coupler, and fiberglass shaft log. Again, [REDACTED] hauled the vessel and arranged for the necessary repairs to be accomplished. By arranging for the vessel to be hauled and repaired, we find that [REDACTED] took all reasonable steps to overcome the circumstances that thwarted his intent to operate a charter halibut fishing business during 2008.

Based on the above findings, we conclude that [REDACTED] meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(1), the unavoidable circumstance regulation for applicants that did not meet the minimum participation requirement in the recent participation period.

2. Does [REDACTED] meet the requirement in section (v) of 50 C.F.R. § 300.67(g)(1) for a transferable permit? Yes.

An administrative agency interprets a regulation in light of the language of the regulation, regulatory history and purpose of the regulation. The language of the regulation is unquestionably the most important evidence of the intent of the adopting body and the meaning of the regulation.⁷ The North Pacific Fishery Management Council recommended that NMFS adopt, by regulation, the Charter Halibut Limited Access Program. NMFS proposed a regulation to implement the Council recommendation. The Secretary of Commerce, through NMFS, approved the final regulation pursuant to section 773c(c) of the Northern Pacific Halibut Act of 1982.⁸

If an applicant meets section (i) through (iv) of 50 C.F.R. § 300.67(g)(1), section (v) tells NMFS the number of permits, the type of permits and the angler endorsement on those permits that the applicant will receive. But what, specifically, is it telling NMFS to do? To repeat, section (v) states:

⁷ Norman J. Singer & J.D. Shambie Singer, SUTHERLAND STATUTORY CONSTRUCTION § 46.1 (7th ed. 2007). The principles of statutory interpretation generally apply to regulatory interpretation. *Id.*, § 31.6 at 696 – 97.

⁸ Final Rule, 75 Fed. Reg. 554, 554 (Jan. 5, 2010).

(v) If the applicant proves the foregoing (*see* paragraphs (g)(1)(i) through (iv) of this section), the applicant will receive the number of transferable and non-transferable permits and the angler endorsements on these permits *that result from the application of criteria in paragraphs (b), (c), (d), (e), and (f) of this section.*

The criteria in paragraphs (b), (c), (d), (e) and (f) are the criteria in 50 C.F.R. § 300.67(b), (c), (d) and (f). These are the requirements to receive a charter halibut permit based on an applicant's *actual* or *historical* participation requirements in the qualifying period and the recent participation period.⁹

Once an applicant shows that it did not participate in the recent participation period due to an unavoidable circumstance, and meets the requirements in sections (i) through (iv), what does section (v) mean that the applicant will receive the permits that “that result from the application of criteria in paragraphs (b), (c), (d), (e) and (f) of [section 300.67]?”

We examine the three possible interpretations of this provision: [1] a literal interpretation – NMFS applies all the criteria in these paragraphs; [2] the substitution interpretation – NMFS applies the criteria in these paragraphs that pertain to the qualifying period because this applicant, by definition, will never meet any of the participation requirements for the recent period; [3] the additional finding interpretation – NMFS applies the criteria in these paragraphs that pertain to the qualifying period and NMFS makes an additional finding as to the applicant's likely participation in the recent period.

We conclude that the substitution interpretation is the correct interpretation of section (v) of 50 C.F.R. § 300.67(g)(1). This means that, once an applicant proves it did not participate in the recent period due to an unavoidable circumstance, as required in sections (i) to (iv) of 50 C.F.R. § 300.67(g)(1), section (v) requires that NMFS issue the applicant the type of permit – transferable or non-transferable – based on the applicant's participation in the qualifying period. Thus, if the applicant reported fifteen or more bottomfish logbook fishing trips in one year in the qualifying period with the same vessel, the applicant receives a transferable permit. If the applicant made reported a minimum of five bottomfish logbook fishing trips in one year in the qualifying period, the applicant receives a non-transferable permit.

A. A literal interpretation renders this regulatory provision meaningless.

The most fundamental purpose of any regulation is to do something.¹⁰ If NMFS interpreted this regulatory provision literally, it would do nothing. Under a literal interpretation, NMFS would

⁹ 50 C.F.R. § 300.67(b), (c), (d), (e) and (f). The number of permits is not at issue in this appeal. [REDACTED] used one charter boat in the qualifying period, intended to use one boat in the recent period and is only claiming one permit.

¹⁰ “A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant” Norman J. Singer & J.D. Shambie Singer,

issue the applicant the number and types of permits that result from the application of all the criteria in paragraphs (b), (c), (d) and (e). If NMFS applied every criteria in paragraphs (b), (c), (d) and (e) to an applicant who did not participate in the recent period due to an unavoidable circumstance, NMFS would issue no permits pursuant to this regulation. That is because some of these criteria require actual participation in the recent period.¹¹ But this applicant, by definition, does not meet the actual participation requirements for a permit in the recent period.

A literal interpretation must be rejected. Once an applicant has proved that it meets section (i) through (iv), NMFS must determine the number and type of permits that an applicant will receive by some other way than the applying all the criteria that NMFS applies to an applicant that meets the actual participation requirements for a permit in the qualifying period and the recent period.

B. The substitution interpretation is the correct interpretation of section (v) of 50 C.F.R. § 300.67(g)(1).

The substitution interpretation is the interpretation adopted in the Decision, namely once the applicant proves it did not participate in the recent period due to an unavoidable circumstance, NMFS issues the applicant the number and type of permits “that result from application of the criteria in paragraphs (b), (c), (d), (e), and (f) of this section [to an applicant’s participation in the qualifying period.]”

The substitution interpretation is as faithful to the language of section (v) as NMFS can be. NMFS applies all the criteria in paragraphs (b), (c), (d), (e) and (f) that it can apply, given that this applicant did not participate in the recent period. The criteria that NMFS can apply are those criteria that are based on participation in the qualifying period because this applicant, by definition, did participate in the qualifying period.¹² NMFS, in effect, substitutes the applicant’s participation in the qualifying period, where this applicant has a history of participation, for the applicant’s participation in the recent period, if the applicant shows that the applicant’s lack of participation was due to unavoidable circumstances.

The regulatory history strongly supports this interpretation. The regulatory history is helpful and is quite specific. In the proposed rule, NMFS explained:

Missed recent participation period. An applicant who meets the participation requirements for the qualifying period (2004 and 2005) may claim that it did not meet the participation requirement in the recent participation period due to an unavoidable circumstance. Assuming the applicant is able to successfully demonstrate that it meets the criteria for an unavoidable circumstance, NMFS

SUTHERLAND STATUTORY CONSTRUCTION § 46.6 at 230 - 242 (7th ed. 2007)(footnotes omitted).

¹¹ 50 C.F.R. § 300.67(b)(1)(ii)(B)(five trips for a non-transferable permit); 50 C.F.R.

§ 300.67(d)(1)(ii)(fifteen trips with the same vessel for a transferable permit)

¹² An applicant cannot claim unavoidable circumstances in the qualifying period and the recent period.

proposes to award the applicant the number and type of permits that the applicant would have received if its participation during the recent participation period had been the same as its participation during the qualifying period. The Council did not address this issue. However, NMFS determined that *substituting the qualifying period participation for actual participation during the recent participation period best reflects what the Council was trying to achieve by recommending that an unavoidable circumstance exception be included in this program.*¹³

This supports the conclusion that, once the applicant shows it faced an unavoidable circumstance in the recent period, the purpose of section (v) of 50 C.F.R. § 300.67(g)(1) is that NMFS should substitute the applicant's actual participation in the qualifying period for the applicant's nonexistent, or insufficient, participation in the recent period and issue the permits that result.

The rule adopts an assumption that, if the applicant did not participate in the recent period due to an unavoidable circumstance, the applicant's participation in the recent period would have been the same as the applicant's participation in the qualifying period. The rule assumes that an applicant who faced an unavoidable circumstance in the recent period (2008), and made fifteen trips or more in one year in the qualifying period (2004, 2005) with the same vessel, would have done the same in the recent period, but for the unavoidable circumstance. Similarly, the rule assumes that an applicant who faced an unavoidable circumstance in the recent period (2008), and made five trips (but less than fifteen) in the qualifying period (2004, 2005), would have done the same in the recent period, but for the unavoidable circumstance. These are reasonable assumptions.

C. The additional finding interpretation is not the correct interpretation of section (v) of 50 C.F.R. § 300.67(g)(1).

We acknowledge that NMFS could have adopted a regulation that required NMFS to make an additional showing of the applicant's likely level of participation in the recent period – five trips versus fifteen trips – before NMFS issued applicants in [REDACTED] situation a transferable permit. But we conclude that NMFS did not do that.

The language of section (v) of 50 C.F.R. § 300.67(g)(1) does not state that NMFS should apply the criteria in the regulation to the applicant's actual participation in the qualifying period *and* then require the applicant to prove its likely participation in the recent period. In the proposed rule, NMFS did *not* state that, for the applicant who proves unavoidable circumstances in the recent period, NMFS must make an additional finding before it could issue that applicant a transferable permit.

The most telling evidence against the additional finding interpretation is the other half of the unavoidable circumstance regulation, namely 50 C.F.R. § 300.67(g)(2). This half of the

¹³ Proposed Rule, 75 Fed. Reg. 18,178, 18,187 (Apr. 21, 2009).

regulation applies to the applicant in the reverse situation from [REDACTED] namely the applicant who did *not* participate in the qualifying period (2004, 2005) and *did* participate in the recent period (2008). Both halves of the regulation have the same structure and are the same in sections (i) through (iv): the applicant had a specific intent to operate a charter halibut fishing business in the missed period; the intent was thwarted by a circumstance that was unavoidable, unique, unforeseen, reasonably unforeseeable; the circumstance occurred; and the applicant took all reasonable steps to overcome it. But section (v) of 50 C.F.R. § 300.67(g)(2) is completely different. It states:

(v) If the applicant proves the foregoing (*see* paragraphs (g)(2)(i) through (iv) of this section), the applicant will receive either:

(A) One non-transferable permit with an angler endorsement of four (4);
or

(B) The number of transferable and non-transferable permits, and the angler endorsement on those permits, *that result from the logbook fishing trips that the applicant proves likely would have been taken by the applicant but for the circumstance that thwarted the applicant's specific intent to operate a charter halibut fishing business* in one year of the qualifying period and the applicant did not participate during the other year of the qualifying period. [emphasis added]

The regulation unambiguously and clearly provides that, once an applicant proves it faced an unavoidable circumstance in the qualifying period, NMFS issues the applicant a non-transferable permit with an angler endorsement of four, *unless* NMFS makes an additional finding as to the applicant's likely participation in the qualifying period. NMFS's explanation of the proposed rule is equally explicit:

The proposed rule, in essence, adopts a default provision for an applicant that successfully demonstrates that it meets the criteria for unavoidable circumstances, namely a non-transferable permit with an angler endorsement of four. This provision, at a minimum, would allow an applicant to participate in the fishery. This provision also would allow an applicant to receive more permits, or transferable permits, or an angler endorsement greater than four, *only if the applicant shows that it likely would have participated at that higher level but for the unavoidable circumstance.*

For example, if an applicant states that it should receive one transferable charter halibut permit with an angler endorsement of six, *then the applicant must show that the applicant likely would have reported at least 15 logbook fishing trips with a vessel in 2004 or 2005 and would have taken six anglers on one of those trips. The applicant would be required to show this by a preponderance of the evidence.* This means that the applicant must show that it is more likely than not that it

would have met that participation requirement were it not for the unavoidable circumstance.¹⁴

For the unavoidable circumstance applicant that missed the qualifying period, the regulation clearly informs the public that NMFS issues a transferable permit, *only* if NMFS makes an additional finding that the applicant would have likely participated at the fifteen-trip level in the qualifying period but for the unavoidable circumstance. If NMFS was required to make the same finding for the applicant that missed the recent period, it is reasonable to assume that the NMFS would have done that with the same language.

Instead, the rule has completely different language in section (v) of the two unavoidable circumstance provisions, and NMFS gave completely different explanations of these two provisions in the proposed rule. Although it would have been more consistent to treat the two types of unavoidable circumstance applicants the same, under the rubric of interpretation, we cannot rewrite these two different regulatory provisions to be the same.¹⁵

Upon careful reflection, we conclude that, once an applicant proves that the applicant did not participate in the recent period because of an unavoidable circumstance, and meets the requirements in section (i) through (iv) of 50 C.F.R. § 300.67(g)(1), section (v) of that regulation requires that NMFS substitute the applicant's actual participation in the qualifying period and determine the applicant's permits based on the applicant's participation in the qualifying period.

D. Application of standard.

██████████ has proven that he did not participate in the recent period due to unavoidable circumstances and that he meets the requirements in section (i) through (iv) of 50 C.F.R. § 300.67(g)(1). Section (v) requires that NMFS issue to ██████████ the number of permits and the type of permits (and the angler endorsement) that result from his participation in the qualifying period. ██████████ made sixteen reported groundfish logbook fishing trips with one vessel in 2004. Therefore, ██████████ meets the requirements for a transferable charter halibut permit.

We note that ██████████ submitted additional evidence regarding his likely participation in 2008. This evidence included evidence of reservations for 14 separate days of charter halibut fishing, which would count for fourteen halibut logbook fishing trips;¹⁶ contact information for those clients; the credible assertion that, through advertising and referrals, he likely would have made at least one more halibut logbook fishing trip. If we had concluded that ██████████ had to make an additional showing of his likely level of participation in 2008, ██████████ met the

¹⁴ Proposed Rule, 75 Fed. Reg. 18,178, 18,187 (Apr. 21, 2009) (emphasis added).

¹⁵ "Yet when the legislature uses certain language on one part of the statute and different language in another, the court assumes different meanings were intended." Norman J. Singer & J.D. Shambie Singer, SUTHERLAND STATUTORY CONSTRUCTION § 46.6 at 250 – 251 (7th ed. 2007).

¹⁶ 50 C.F.R. § 300.67(f)(4).

requirement in the regulation to hold a hearing on that issue.¹⁷ In light of the legal conclusion in this decision, we did not hold a hearing.

3. What is the angler endorsement on [REDACTED] permit? Six.

The angler endorsement number on an applicant's first permit (transferable or non-transferable) is the highest number of charter vessel anglers that the applicant reported on any trip in the qualifying period.¹⁸ [REDACTED] is receiving one permit. In the qualifying period, the highest number of charter vessel anglers that [REDACTED] reported on any trip was six. Therefore, [REDACTED] permit will be endorsed for six anglers.

Finally, the permit will be endorsed for use in the International Pacific Halibut Commission [IPHC] regulatory area where the qualifying charter halibut fishing activity occurred, which is area 2C.¹⁹

FINDINGS OF FACT

1. [REDACTED] reported sixteen bottomfish logbook fishing trips in 2004 with the [REDACTED]
2. [REDACTED] held a specific intent to operate his charter halibut fishing business during the recent participation period (2008).
3. [REDACTED] intent was thwarted by two circumstances that were unavoidable, unique to his business, unforeseen and reasonably unforeseeable, namely two mechanical breakdowns of his vessel that required substantial repairs to the vessel.
4. The unavoidable circumstances actually occurred.
5. [REDACTED] took all reasonable steps to overcome the circumstances.
6. The highest number of anglers that [REDACTED] reported on a bottomfish logbook fishing trip in the qualifying period was six.

¹⁷ 50 C.F.R. § 679.43(g)(3).

¹⁸ 50 C.F.R. § 300.67(e)(1) & (3).

¹⁹ 50 C.F.R. § 300.61: "Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58° 11' 54" N. lat., 136° 38' 24" W. long.) and south and east of a line running 205° true from said light."

CONCLUSIONS OF LAW

1. [REDACTED] meets the participation requirement in the qualifying period for a transferable charter halibut permit.
2. [REDACTED] meets the requirements in sections (i) through (iv) of the unavoidable circumstance regulation for applicants who did not meet the minimum participation requirement in the recent participation period, 50 C.F.R. § 300.67(g)(1).
3. If an applicant meets the requirements in section (i) through (iv) of 50 C.F.R. § 300.67(g)(1), with regard to the applicant's lack of participation in the recent period, section (v) requires that NMFS substitute the applicant's actual participation in the qualifying period for the applicant's participation in the recent period and determine the applicant's permits based on the applicant's participation in the qualifying period.
4. [REDACTED] qualifies for a transferable charter halibut permit, endorsed for six clients, for use in IPHC regulatory area 2C.

DISPOSITION AND ORDER

The denial of [REDACTED] application for a charter halibut permit, as set out in the IAD that is the subject of this appeal, is VACATED. RAM is ordered to issue a transferable charter halibut permit, endorsed for six clients, for use in IPHC regulatory area 2C to [REDACTED]. This Decision takes effect on December 3, 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 by this Office not later than 4:30 p.m., A.S.T., on November 15, 2010, the tenth day after this Decision. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the administrative judges, and must be accompanied by a written statement in support of the motion.

[REDACTED]
Philip J. Smith
Administrative Judge

[REDACTED]
Mary Alice McKeen
Administrative Judge