

show he met the requirement that in 2008 he reported at least five halibut logbook fishing trips to the Alaska Department of Fish and Game (ADF&G).⁵ RAM also acknowledged Appellant's unavoidable circumstances claim, but advised Appellant that that type of claim had to be resolved by OAA. This timely appeal followed.⁶

After reviewing the file, I decided an oral hearing was the best way to resolve the issues presented by the appeal. After a thirty-day notice of scheduling, I conducted an oral hearing on April 26, 2010. At the hearing, Appellant was the only witness. At the hearing I set May 10, 2011 as the deadline for additional submissions to the record. Appellant did not submit additional documents to NAO after the hearing. I have reviewed Appellant's appeal and the case record and I have determined that the record now contains sufficient information on which to reach final judgment. Accordingly, I close the record and issue this Decision.⁷

ISSUES

At issue in this appeal is whether Appellant is qualified to receive a CHP. To resolve this issue, I must evaluate the following:

1. Did Appellant establish by a preponderance of the evidence that he meets the minimum participation requirements to qualify for a CHP, i.e., whether he reported at least five logbook fishing trips in 2004 or 2005, and 2008?
2. If the answer to Question 1 is "no," I must evaluate the applicability of the unavoidable circumstance provisions of the CHLAP regulation. That is, I must consider whether Appellant meets the following elements of an unavoidable circumstances claim: he reported at least five logbook fishing trips in 2004 or 2005; he specifically intended to operate a charter halibut fishing business in 2008; he suffered from an actual, unavoidable circumstance in 2008; the circumstance was unforeseen, reasonably unforeseeable and unique to Appellant, and; he took all reasonable steps to overcome the unavoidable circumstance.
3. If the answer to the inquiries in Question 2 are all "yes," then I must determine whether: Appellant operated one vessel and therefore is eligible for one permit; substituting Appellant's participation in the qualifying period in 2005, i.e., nine logbook fishing trips, for his participation in 2008, results in Appellant qualifying for a nontransferable permit; the highest number of anglers on Appellant's charter halibut trips in 2005 was four and therefore Appellant's permit should be endorsed for four anglers, and; Appellant met the participation requirements based on his participation in Area 3A (as opposed to or in addition to Area 2C),⁸ and therefore his permit should be for Area 3A.

⁵ Original File, IAD dated September 1, 2010.

⁶ Original File, Appellant's appeal received October 12, 2010.

⁷ See 50 C.F.R. § 679.43(g)(2) and (k).

⁸ "Area 3A" and "Area 2C" refer to International Halibut Commission (IPHC) regulatory areas. See 50 C.F.R. § 300.67.

FINDINGS OF FACT

1. For the past eighteen years, Appellant's business has been licensed and Appellant has been licensed by the U.S. Coast Guard.⁹
2. In 2004, Appellant did not go charter fishing but was focusing on building family cabins in Alaska.¹⁰
3. In 2005, Appellant reported nine logbook fishing trips to ADF&G.¹¹ The trips were taken in Area 3A.¹²
4. The maximum number of anglers Appellant can take on his vessel (Vessel) used for charter halibut trips is four, and four is the largest number of anglers he took on trips in 2005.¹³
5. After 2005, Appellant rarely completed more than fifteen charter fishing trips per season.¹⁴
6. In 2006 and 2007, most of Appellant's charters were for salmon.¹⁵
7. In May 2007, Appellant slipped on ice in Alaska. [REDACTED]
[REDACTED]¹⁶
8. At the time of the accident and continuing into and during all of 2008, Appellant did not have medical insurance because he was a seasonal employee during the winter months working as an automobile collision specialist.¹⁷
9. Appellant's sister is a highly-qualified physical therapist. Appellant's sister is well educated, experienced, and an officer in the military. She advised Appellant that a certain course of medical treatment would not help [REDACTED] and therefore Appellant sincerely believed the treatment would be a waste of money. At that point in time, Appellant sincerely believed he would just have to live with the pain.¹⁸
10. As a result of the injury in or around May 2007, Appellant was in a lot of pain.¹⁹ Appellant could not lift his left arm above his head. Appellant was unable to pull Vessel's anchor. Appellant could not operate Vessel for charter halibut fishing.²⁰

⁹ Appellant's hearing testimony.

¹⁰ Appellant's hearing testimony.

¹¹ Original File, Print Summary, created on January 26, 2010; Original File, IAD dated September 1, 2010.

¹² Original File, Print Summary, created on January 26, 2010.

¹³ Appellant's hearing testimony; Original File, Print Summary, created on January 26, 2010.

¹⁴ Appellant's hearing testimony.

¹⁵ Appellant's hearing testimony.

¹⁶ Appellant's hearing testimony.

¹⁷ Appellant's hearing testimony.

¹⁸ Appellant's hearing testimony.

¹⁹ Original File, Orthopedist letter dated March 7, 2008.

²⁰ Appellant's hearing testimony; Original File, Orthopedist letter dated March 7, 2008.

11. In 2007 and 2008, Appellant did not advertise his fishing charter business, because historically he relied on repeat customers to provide sufficient clientele.²¹

12. Halibut fishing can be physically demanding inasmuch as halibut can weigh over 70 pounds and may require force to be subdued.²²

13. Around February 2008, Appellant had a physical in order to renew his U.S. Coast Guard license. The physician who performed the physical suggested a certain treatment plan, the same one rejected by Appellant's sister, that the physician thought would possibly make Appellant's shoulder more useable.²³

14. After the physical and upon the advice of the physician who performed the physical, Appellant sought the advice of an orthopedist. The cost to Appellant for the orthopedist, as an uninsured patient, was approximately \$600.²⁴

15. The orthopedist's office administered the treatment recommended by the physician who performed Appellant's physical.²⁵

16. The treatment eased some of the pain immediately, and over time, eased the pain to the point of close to normal functioning of the shoulder.²⁶

17. After the treatment by the orthopedist and beginning in March 2008 and continuing into the Fall, Appellant did physical therapy exercises as advised by his sister, a physical therapist.

18. Right after the orthopedist's treatment in 2008, Appellant attempted to operate Vessel, and realized, despite some feeling of improvement, he was still unable to operate Vessel due to the injury ██████████ in particular, Appellant could still not pull Vessel's anchor.

19. By the Fall of 2008, Appellant's ██████████r had improved to the point that he could shoot a bow and arrow.²⁷

20. In 2008, Appellant reported no logbook fishing trips to ADF&G.²⁸

21. In 2008, Appellant bought approximately \$2,000 worth of halibut rod and reel equipment.²⁹

²¹ Appellant's hearing testimony.

²² Original File, Orthopedist letter dated March 7, 2008.

²³ Appellant's hearing testimony.

²⁴ Appellant's hearing testimony; Original File, Orthopedist letter dated March 7, 2008.

²⁵ Original File, Orthopedist letter dated March 7, 2008.

²⁶ Original File, Orthopedist letter dated March 7, 2008.

²⁷ Original File, Orthopedist letter dated March 7, 2008.

²⁸ Original File, Print Summary, created on January 26, 2010.

²⁹ Appellant's hearing testimony.

22. In or around April/May 2008, Appellant had booked twelve charter halibut fishing trips.³⁰

23. Not all booked charter fishing trips are actually taken due to adverse weather conditions.³¹

24. In 2005 and 2008, Appellant owned Vessel, a boat suitable for charter halibut fishing.³²

25. Vessel is a twenty-foot, tiller-run boat.³³

26. Appellant operates Vessel's tiller with his left hand.³⁴

27. In 2008, due to the accident and ongoing problem with [REDACTED] Appellant was unable to provide halibut charters.³⁵

28. After realizing he would not be able to provide halibut charters in 2008, Appellant searched for a substitute captain to operate Vessel, but found that all qualified operators were engaged by other lodges.³⁶

29. On March 10, 2010, Appellant filed a timely application for a CHP. On the application, Appellant identified 2005 as his "Applicant Selected Year." He also requested a permit endorsed for both areas, 2C and 3A.³⁷

PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS will issue a CHP if the applicant meets certain requirements. One such requirement is that the applicant is an individual, or non-individual entity, to which ADF&G issued ADF&G Business Owner Licenses that authorized logbook fishing trips that meet minimum participation requirements.³⁸

Minimum participation requirements to qualify for a CHP 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 2008.³⁹

³⁰ Original File, Orthopedist letter dated March 7, 2008.

³¹ Appellant's hearing testimony.

³² Original File, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A.

³³ Appellant's hearing testimony.

³⁴ Appellant's hearing testimony.

³⁵ Appellant's hearing testimony.

³⁶ Appellant's hearing testimony.

³⁷ Original File, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A.

³⁸ 50 C.F.R. § 300.67(b)(1)(ii).

³⁹ 50 C.F.R. § 300.67(b)(1)(ii)(A) and (B); 50 C.F.R. § 300.67(f)(6) and (7).

Minimum participation criteria for a transferable permit are as follows: an applicant must have reported fifteen or more bottomfish logbook fishing trips from the same vessel during one year of the qualifying period, namely 2004 or 2005, and must have reported fifteen halibut logbook fishing trips or more from the same vessel during the recent participation period, namely 2008.⁴⁰ The number of transferable CHPs issued to an applicant will be equal to the lesser of the number of vessels that met the minimum transferable permit qualifications described above.⁴¹

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 [ADF&G] in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.⁴²

A “bottomfish logbook fishing trip” means a logbook fishing trip in the qualifying period that was reported to the State of Alaska [ADF&G] 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.⁴³

A “halibut logbook fishing trip” means a logbook fishing trip in the recent participation period that was reported to the State of Alaska [ADF&G] 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.⁴⁴

“Applicant selected year” means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant’s number of transferable and nontransferable permits.⁴⁵

The Official Record is the information NMFS prepared regarding participation in charter halibut fishing in Area 2C and Area 3A, which NMFS will use to implement the CHLAP and evaluate applications for charter halibut permits.⁴⁶

An applicant that meets the participation requirements will be issued the number of CHPs equal to the lesser of the number of permits as follows: (1) The total number of bottomfish logbook fishing trips made pursuant to the applicant's ADF&G Business License in the applicant-selected year divided by five, and rounded down to a whole

⁴⁰ 50 C.F.R. § 300.67(d)(1)(i) and (ii).

⁴¹ 50 C.F.R. § 300.67(d)(2).

⁴² 50 C.F.R. § 300.67(f)(4).

⁴³ See 50 C.F.R. § 300.67(f)(2).

⁴⁴ See 50 C.F.R. § 300.67(f)(3).

⁴⁵ 50 C.F.R. § 300.67(f)(1).

⁴⁶ 50 C.F.R. § 300.67(f)(5).

number; or (2) The number of vessels that made the bottomfish logbook fishing trips in the applicant-selected year.⁴⁷

The angler endorsement number for the first nontransferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period in that area.⁴⁸

If an applicant does not qualify for a CHP based on the criteria outlined above, he may still be eligible for a permit if he meets the criteria for what is known as an unavoidable circumstances claim. The threshold criterion for an unavoidable circumstance claim, as it applies to this appeal, is that the applicant meets the participation requirement for the qualifying period (2005) but does not meet the participation requirement for the recent participation period (2008). If that threshold criterion is met, the applicant must also prove by a preponderance of the evidence the following: the applicant had a specific intent to operate a charter halibut fishing business in the recent participation period (2008); the applicant's specific intent was thwarted by a circumstance that was unavoidable, unique to the owner of the charter halibut fishing business, and unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business; the circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and the applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in the recent participation period (2008).⁴⁹ If the applicant proves the foregoing, the applicant will receive the number of transferable and nontransferable permits and the angler endorsements on these permits that result from the application of criteria in 50 C.F.R. § 300.67 (b) through (f).

To explain the type and number of permits qualified applicants will receive, NMFS stated the following in the preamble to the Proposed Rule for the CHLAP regulations:

NMFS 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.⁵⁰

In the preamble to the Final Rule implementing the CHLAP NMFS affirmed the approach articulated in the Proposed Rule: "The preamble to the proposed

⁴⁷ 50 C.F.R. § 300.67(c)(1) and (2).

⁴⁸ 50 C.F.R. § 300.67(e)(3).

⁴⁹ 50 C.F.R. § 300.67(g)(1)(i)-(iv).

⁵⁰ See 74 Fed. Reg. 18187 (April 21, 2009).

rule...contains a detailed description of the unavoidable circumstances exception to the qualification requirements.”⁵¹

“A charter halibut permit for IPHC [International Pacific Halibut Commission] regulatory [A]rea 2C must be based on meeting participation requirements in [A]rea 2C. A charter halibut permit for IPHC regulatory [A]rea 3A must be based on meeting participation requirements in [A]rea 3A. Qualifications for a charter halibut permit in each area must be determined separately and must not be combined.”⁵²

ANALYSIS

Did Appellant establish by a preponderance of the evidence that he meets the minimum participation requirements to qualify for a CHP, i.e., whether he reported at least five logbook fishing trips in 2004 or 2005, and 2008?

The first issue I must resolve in this case is whether Appellant has established by a preponderance of the evidence that he meets the minimum participation requirements to qualify for a CHP.⁵³ 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 2008, the recent participation period.⁵⁴

Appellant does meet the minimal participation requirements for 2005, as he logged nine bottomfish trips that year. However, Appellant did not report qualifying charter fishing trips for 2008.⁵⁵ Rather, Appellant argues on appeal that unavoidable circumstances, within the meaning of the CHLAP, prevented him from chartering in 2008. Since Appellant does not meet the minimum participation requirements previously discussed, namely with regard to the 2008 recent participation period, I must now determine whether the unavoidable circumstance provision of the CHLAP regulations, set out in 50 C.F.R. § 300.67(g)(1), qualifies Appellant to receive a CHP.

Does Appellant meet the following elements of an unavoidable circumstances claim: he reported at least five logbook fishing trips in 2004 or 2005; he specifically intended to operate a charter halibut fishing business in 2008; he suffered from an actual, unavoidable circumstance in 2008; the circumstance was unforeseen, reasonably unforeseeable and unique to Appellant, and; he took all reasonable steps to overcome the unavoidable circumstance.

The CHLAP regulations provide, specific to the issue at hand, that an applicant for a CHP that meets the participation requirement for the qualifying period (in this case 2005), but does not meet the participation requirement for the recent participation

⁵¹ See 75 Fed. Reg. 586 (January 5, 2010)(response to comment 109).

⁵² 50 C.F.R. § 300.67(b).

⁵³ See 50 C.F.R. § 300.67(b)(1)(ii)(A)&(B) and (d)(1).

⁵⁴ 50 C.F.R. § 300.67(b).

⁵⁵ Appellant's hearing testimony.

period (2008), may receive one or more permits if the applicant proves he meets the elements of an unavoidable circumstance claim.⁵⁶ I will now address each element.

The first element, is that the applicant had a specific intent to operate a charter halibut fishing business in the recent participation period (2008).⁵⁷ In this case, the evidence of Appellant's specific intent includes his active business license and U.S. Coast Guard license for 2008. These show that Appellant at a minimum had the licenses to provide charter trips in 2008. Appellant had also booked clients, about twelve bookings in fact. I find Appellant's testimony credible on this point, particularly since he detailed his history with certain clients and why they returned to him for charters. Appellant tried to operate his boat in 2008, but found that his ██████████ injury had not recovered sufficiently for him to operate Vessel and attend to the strenuous tasks that can be associated with halibut fishing. Under the circumstances, I find that Appellant held the specific intent within the meaning of 50 C.F.R. § 300.67(g)(1)(i)-(iv). I thus turn to the next element of an unavoidable circumstance claim.

Fifty C.F.R. § 300.67(g)(1)(ii)(A)-(C) and (iii) requires that the applicant's specific intent was thwarted by an actual circumstance that was unavoidable, unique to the owner of the charter halibut fishing business, and unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business. Generally, an accident and medical emergency are not avoidable; indeed, most people would avoid such instances if they could. Certainly, Appellant's accident and injury were unique to him inasmuch as the record does not show the exact same accident, at the same time and place and same injury occurring to others. I believe and so find that Appellant actually had an accident that caused a serious injury ██████████. I have no reason to think Appellant nor a reasonable person could have foreseen the accident; indeed, the very nature of an accident is that one could not foresee it. Under the circumstances, I find that Appellant's accident of falling on ice actually occurred and was unavoidable, unique, and unforeseen and reasonably unforeseeable within the meaning of 50 C.F.R. § 300.67(g)(1)(ii)(A)-(C) and (iii). I therefore turn to the next element of an unavoidable circumstance claim.

Fifty C.F.R. § 300.67(g)(1)(iv) requires that the applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in the recent participation period in 2008. In the case before me, Appellant was uninsured, and because he was uninsured, had limited treatment options. He relied on his sister, an experienced and highly-qualified physical therapist, for advice. She advised him that a certain treatment would not do him much good, and therefore, he did not seek that treatment and instead hoped he could heal on his own. However, when he had to have a physical, the physician who performed that physical advised him the exact opposite. That doctor said she thought the treatment was worth trying. Almost immediately, Appellant sought out the treatment at an out-of-pocket cost of about \$600. Given Appellant's lack of medical insurance, due to no fault of his own, it is not surprising he sought out the best advice he could afford, free of charge from his

⁵⁶ 50 C.F.R. § 300.67(g)(1).

⁵⁷ 50 C.F.R. § 300.67(g)(1)(i).

sister. Appellant also searched for a substitute captain to operate Vessel, but found that all qualified operators were engaged by other lodges. Under the circumstances, I find that Appellant took all reasonable steps to overcome the circumstance that prevented Appellant from operating a charter halibut fishing business in 2008 within the meaning of 50 C.F.R. § 300.67(g)(1)(iv).

Since Appellant proved that he met the requirements of the unavoidable circumstances provision, I will address whether: Appellant operated one vessel and therefore is eligible for one permit; substituting Appellant’s participation in the qualifying period in 2005, i.e., nine logbook fishing trips, for his participation in 2008, results in Appellant qualifying for a nontransferable permit; the highest number of anglers on Appellant’s charter halibut trips in 2005 was four and therefore Appellant’s permit should be endorsed for four anglers, and; Appellant met the participation requirements based on his participation in Area 3A (as opposed to or in addition to Area 2C),⁵⁸ and therefore his permit should be for Area 3A.

Having determined Appellant meets the criteria for an unavoidable circumstance claim pursuant to 50 C.F.R. § 300.67(g)(1), I must now determine the number of CHPs Appellant is qualified to receive.⁵⁹ Fifty C.F.R. § 300.67(c) specifies that the number of permits allowed will be the lesser of two factors, one of which is “the number of vessels that made the bottomfish logbook fishing trips in the applicant selected year.” Simply put, if an applicant used one boat, he can get one permit. Appellant’s “applicant selected year” is 2005. In 2005, there is no dispute that Appellant used only one vessel, Vessel, for the bottomfish logbook fishing trips he made in 2005. Hence, Appellant is qualified to receive one CHP.

As to the type of permit Appellant is qualified to receive, transferable or nontransferable,⁶⁰ the preamble to the Proposed Rule and to the Final Rule of the CHLAP provides guidance on these issues. In the preamble to the Proposed Rule for the CHLAP regulations NMFS states:

NMFS 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.⁶¹

⁵⁸ “Area 3A” and “Area 2C” refer to International Halibut Commission (IPHC) regulatory areas. See 50 C.F.R. § 300.67.

⁵⁹ See 50 C.F.R. § 300.67(b)-(f) and (g)(1)(v).

⁶⁰ See 50 C.F.R. § 300.67(g)(2).

⁶¹ See 74 Fed. Reg. 18187 (April 21, 2009).

In the preamble to the Final Rule NMFS indicated that the reasoning articulated in the Proposed Rule remained valid: “The preamble to the proposed rule...contains a detailed description of the unavoidable circumstances exception to the qualification requirements.”⁶² Further, to qualify for a transferable permit the key requirement is proof of fifteen or more qualifying trips in both periods of participation (in this case 2005 and 2008).⁶³

Thus, for purposes of resolving the type of permit Appellant is qualified to receive, I must examine the extent of Appellant’s participation during the qualifying period, 2004 or 2005, as a substitute for Appellant’s participation in 2008. In 2004, Appellant reported no logbook fishing trips to ADF&G. For 2005, Appellant reported nine such trips. Thus, Appellant’s substituted participation from 2005 for 2008 is nine logbook fishing trips. As nine is less than the minimal number, fifteen, for a transferable permit, Appellant’s permit shall be nontransferable.

With regard to the angler endorsement on the permit, CHLAP regulations provide that the angler endorsement number for the first nontransferable permit will be the greatest number of charter vessel anglers reported on any logbook trip in the applicant’s qualifying period.⁶⁴ In 2005, the qualifying period for Appellant, the maximum number of anglers reported was four anglers. Accordingly, I conclude that Appellant’s nontransferable CHP will be endorsed for four anglers.

Lastly, I must determine whether the permit will be for use in Area 2C or 3A, or 2C and 3A. The CHLAP regulations speak to this issue: “A charter halibut permit for IPHC [International Pacific Halibut Commission] regulatory [A]rea 2C must be based on meeting participation requirements in [A]rea 2C. A charter halibut permit for IPHC regulatory [A]rea 3A must be based on meeting participation requirements in area 3A. Qualifications for a charter halibut permit in each area must be determined separately and must not be combined.”⁶⁵ The relevant evidence of record, Appellant’s logbook trips in 2005, shows he operated his business in Area 3A. The record does not show he met participation requirements for Area 2C. Accordingly, the permit that will be awarded based on this appeal will be for Area 3A.

CONCLUSIONS OF LAW

Appellant has not established by a preponderance of the evidence that he meets the minimum participation requirements to qualify for a CHP, because he did not report at least five logbook fishing trips in 2008.

Appellant meets the following elements of an unavoidable circumstances claim: he reported at least five logbook fishing trips in 2005; he specifically intended to operate a

⁶² See 75 Fed. Reg. 586 (January 5, 2010)(response to comment 109).

⁶³ See 50 C.F.R. § 300.67(d).

⁶⁴ 50 C.F.R. § 300.67(e)(3).

⁶⁵ 50 C.F.R. § 300.67(b).

charter halibut fishing business in 2008; he suffered from an actual, unavoidable circumstance in 2008; the circumstance was unforeseen, reasonably unforeseeable and unique to Appellant, and; he took all reasonable steps to overcome the unavoidable circumstance.

Appellant operated one vessel and therefore is eligible for one permit. Appellant did not prove he took fifteen or more logbook trips in 2005; therefore the permit will be nontransferable. Further, the highest number of anglers that went on Appellant's charter halibut trips in 2005 was four, and therefore Appellant's permit will be endorsed for that number of anglers. The permit should be for Area 3A since Appellant met the participation requirements based on participation in Area 3A.

ORDER

The IAD dated September 1, 2010 is vacated. RAM is directed to issue Appellant a nontransferable CHP for Area 3A with an angler endorsement number of four. This decision is effective thirty days from the date issued on June 17, 2011,⁶⁶ 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 elects to review this decision pursuant to 50 C.F.R. § 679.43(k) and (o).

[REDACTED]

Eileen G. Jones
Chief Administrative Judge

Date Issued: May 18, 2011

⁶⁶ 50 C.F.R. § 679.43(k) and (o).