



unavoidable circumstance claim in the recent period.<sup>4</sup> Appellant bases his unavoidable circumstance claim in the year 2005 in the qualifying period on two vessel breakdowns due to engine failures. Appellant bases his unavoidable circumstance claim in 2008 on

RAM determined that Appellant could not make a claim under the unavoidable circumstance regulation, 50 C.F.R. § 300.67(g), with respect to 2008 because he met the minimum participation requirement in 2008 for a non-transferable permit.<sup>5</sup>

With respect to 2005, RAM did not determine whether Appellant met the requirements of the unavoidable circumstance regulation.<sup>6</sup> A claim under the unavoidable circumstance regulation must be decided by an appellate officer, not by RAM.<sup>7</sup>

I have carefully considered the record in this appeal and conclude that the record contains sufficient information upon which to decide this appeal.<sup>8</sup> For the reasons that follow, I conclude that, with respect to 2008, the IAD was correct: Appellant cannot make an unavoidable circumstance claim for the recent participation period if he meets the five-trip minimum participation requirement for that period. With respect to 2005, I conclude that Appellant meets the requirements of the unavoidable circumstance regulation. I therefore conclude that Appellant should receive a non-transferable permit with an angler endorsement of four for use in IPHC Area 2C.

## ISSUES

1. May Appellant make an unavoidable circumstance claim with respect to 2008 when he meets the minimum participation requirement in 2008 for a non-transferable permit?
2. Does Appellant satisfy the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), the unavoidable circumstance regulation for persons that did not meet the minimum participation requirement in the charter halibut fishery in the qualifying period (2004, 2005)?
3. If Appellant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), should Appellant receive a transferable or non-transferable permit?
4. If Appellant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), what is the proper angler endorsement on the permit?

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<sup>4</sup> Application at 2.

<sup>5</sup> IAD at 3.

<sup>6</sup> IAD at 3.

<sup>7</sup> 50 C.F.R. § 300.67(g) (“Unavoidable circumstances claims must be made pursuant to paragraph (h)(6) 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), Changes from the Proposed Rule no. 19.

<sup>8</sup> 50 C.F.R. § 679.43(g)(2).

## FINDINGS OF FACT

1. In 1992, Appellant began participating as a charter vessel operator in Alaska.<sup>9</sup>
2. Appellant has had a United States Coast Guard license that allows him to operate a charter vessel since 1992. His most recent USCG license was issued on December 27, 2007 and is valid for five years. This license allows Appellant to operate uninspected passenger vessels up to twenty-five tons.<sup>10</sup>
3. Appellant has had ADF&G Business Owner Licenses with various designations from 1992 to 2008.<sup>11</sup>
4. From at least 1998 to 2005, Appellant used [REDACTED] (VESSEL) in his charter business. From at least 1998, Appellant had a brochure to advertise his services to potential clients.<sup>12</sup>
5. Appellant's charter business consists of saltwater charter fishing for various species, including halibut, wildlife watching and sightseeing.<sup>13</sup>
6. In 2004, Appellant took two charter halibut trips, which he recorded as bottomfish logbook fishing trips under his ADF&G Business Owner License.<sup>14</sup>
7. In 2005, Appellant took two charter halibut trips, which he recorded as bottomfish logbook fishing trips under his ADF&G Business Owner License.<sup>15</sup>
8. Appellant retired from his position with the federal government before the 2005 charter season and intended to increase the number of charter trips with VESSEL, including the number of halibut charters. He hired his daughter as a deckhand, the only year that he had hired a deckhand up to that point.<sup>16</sup>
9. Appellant began the 2005 season with a new engine in VESSEL with less than ninety hours of use.<sup>17</sup> Appellant experienced two major engine failures. VESSEL's main engine initially failed on May 20, 2005. Appellant was able to keep it running until the engine blew out on June 13, 2005. Appellant took it out of the water and had the engine rebuilt under warranty. In July the engine failed again and VESSEL

<sup>9</sup> Letter from Appellant to RAM (May 11, 2010).

<sup>10</sup> USCG Licenses submitted with Letter from Appellant to RAM (May 11, 2010). Unless I note otherwise, all the documents that I cite in the record are attachments to Appellant's May 11, 2010 letter to RAM.

<sup>11</sup> ADF&G Business Owner Licenses; Letter from Appellant to RAM (May 11, 2010)(accounting for 2000 ADF&G License).

<sup>12</sup> [REDACTED] (Business) brochure (Sep. 1998); Letter from Appellant to RAM (May 11, 2010).

<sup>13</sup> Business Brochure (Sep. 1998); Business Brochure (Dec. 2006).

<sup>14</sup> Email from NMFS Computer Specialist to Mary Alice McKeen (July 12, 2011) (contents of official charter halibut record).

<sup>15</sup> Email from NMFS Computer Specialist to Mary Alice McKeen (July 12, 2011) (contents of official charter halibut record).

<sup>16</sup> Letter from Appellant to RAM (May 11, 2010); Affidavit of [REDACTED] (May 7, 2010).

<sup>17</sup> Statement by Appellant (Mar. 1, 2010).

was drydocked for another period of repairs under warranty. Appellant promptly sought repair of VESSEL after both breakdowns.<sup>18</sup>

10. Appellant had to refund money to clients for two trips that he was unable to take because of VESSEL's engine failure: a one-day trip in June and a three-day trip in July.<sup>19</sup> Appellant turned down at least four other trips in June/early July and two other trips in July.<sup>20</sup>

11. In March 2006, Appellant bought a larger, new vessel.<sup>21</sup>

12. In late 2006, Appellant began experiencing [REDACTED] which progressed to the point that it limited his charter fishing activity in 2008 and [REDACTED].<sup>22</sup>

13. Appellant took six charter halibut logbook fishing trips in 2008.<sup>23</sup> Appellant would have taken more trips but for his health problems.<sup>24</sup>

14. Appellant timely applied for a charter halibut permit in March 2010.<sup>25</sup>

#### PRINCIPLES OF LAW

In March 2007, the North Pacific Fishery Management Council (Council) recommended that the Secretary of Commerce adopt a program of limited entry for the charter halibut fisheries in IPHC Areas 2C and 3A.<sup>26</sup> In January 2010, the Secretary of Commerce adopted the regulations implementing the Charter Halibut Limited Access Program (CHLAP) pursuant to section 773c of The Halibut Act.<sup>27</sup>

The CHLAP regulations are found at 50 C.F.R. §§ 300.61, 300.66, and 300.67. NMFS must follow these regulations in evaluating applications for charter halibut permits.

<sup>18</sup> Letter from Appellant to RAM (May 11, 2010); Statement by Appellant (May 1, 2010); Invoices from [REDACTED] (June 24, 2005; July 12, 2005).

Booking Form (reservation for 6/30/2005) with notation "Refunded money due to mechanical failure;" Affidavit of [REDACTED] (May 5, 2010)(three day trip)."

<sup>20</sup> Statement of Appellant, Summary of Lost Wages (July 18, 2005). Appellant identifies the names of clients he turned away, the trip dates they wanted and what he would have charged them.

<sup>21</sup> Bill of Sale (Mar. 2, 2006) submitted with Application.

<sup>22</sup> Statement of Appellant with supporting documentation (Mar. 1, 2010) submitted with application.

<sup>23</sup> Email from NMFS Computer Specialist to Mary Alice McKeen (July 12, 2011)(contents of official charter halibut record).

<sup>24</sup> Statement of Appellant with supporting documentation (Mar. 1, 2010) submitted with application.

<sup>25</sup> Application (dated Feb. 4, 2010). The date stamp shows RAM received the application in March 2010, but the date in March is not clear. It does not matter because the application period was February 4 – April 5, 2010. Notice of application period, 75 Fed. Reg. 1595 (Jan. 12, 2010).

<sup>26</sup> Proposed Rule, 74 Fed. Reg. 18,178, 18,182 (Apr. 21, 2009). See Council Motion on Charter Halibut Moratorium in Area 2C and 3A, (Mar. 31, 2007), available on NMFS Alaska Region website, [http://alaskafisheries.noaa.gov/npfmc/current\\_issues/halibut\\_issues/CharterHalibutMotion307.pdf](http://alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/CharterHalibutMotion307.pdf).

<sup>27</sup> Final Rule, 75 Fed. Reg. 554, 554 (Jan. 5, 2010).

To receive a charter halibut permit, an applicant must be a person to whom ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that met the minimum participation requirements for a permit.<sup>28</sup>

An applicant must prove participation through logbook fishing trips in two periods: a qualifying period, which is the sport fishing season for halibut in 2004 and 2005,<sup>29</sup> and a recent participation period, which is the sport fishing season for halibut in 2008.<sup>30</sup>

An applicant must prove different levels of participation for a non-transferable permit and for a transferable permit. To receive a non-transferable charter halibut permit, an applicant must have reported a minimum of five bottomfish logbook fishing trips in one year in the qualifying period (2004 or 2005), and a minimum of five halibut logbook fishing trips in the recent participation period (2008). The trips must have been reported under the applicant's ADF&G Business Owner License for that year.<sup>31</sup>

To receive a transferable charter halibut permit, an applicant must have reported a minimum of fifteen bottomfish logbook fishing trips with the same vessel in one year in the qualifying period (2004 or 2005), and fifteen halibut logbook fishing trips with the same vessel in the recent participation period (2008). The trips must have been reported under the applicant's ADF&G Business Owner License.<sup>32</sup>

The charter halibut regulation provides an alternate way for an applicant to meet the participation requirement in one, but not both, participation periods.<sup>33</sup> If an applicant meets a minimum participation trip level in the qualifying period (2004 or 2005), but not the recent participation period (2008), the applicant may claim to meet the requirements in the unavoidable circumstance regulation with respect to the applicant's lack of participation in the recent period (2008).<sup>34</sup>

Similarly, if an applicant meets a minimum participation trip level in the recent participation period (2008), but neither year in the qualifying period (2004 or 2005), the applicant may seek to meet the requirements in the unavoidable circumstance regulation with respect to the applicant's lack of participation in the qualifying period.<sup>35</sup>

<sup>28</sup> 50 C.F.R. § 300.67(b)(1)(ii).

<sup>29</sup> 50 C.F.R. § 300.67(f)(6)(definition of qualifying period).

<sup>30</sup> 50 C.F.R. § 300.67(f)(7)(definition of qualifying period).

<sup>31</sup> 50 C.F.R. § 300.67(b)(1)(ii)(A)-(B). In 2004 and 2005, ADF&G did not require participants in the charter halibut fishery to report halibut specifically but did require participants to report halibut effort as bottomfish effort. Therefore, for 2004 and 2005, the regulation evaluates an applicant's participation by bottomfish logbook fishing trips, not halibut logbook fishing trips. Beginning in 2006, ADF&G required participants to report halibut specifically. Proposed Rule, 74 Fed. Reg. 18,178, 18,185 (Apr. 21, 2009). See 50 C.F.R. § 300.67(f)(2)(definition of bottomfish logbook fishing trip); 50 C.F.R. § 300.67(f)(3) (definition of halibut logbook fishing trip).

<sup>32</sup> 50 C.F.R. § 300.67(d)(1).

<sup>33</sup> 50 C.F.R. § 300.67(g).

<sup>34</sup> 50 C.F.R. § 300.67(g)(1).

<sup>35</sup> 50 C.F.R. § 300.67(g)(2).

To prove a claim under the unavoidable circumstance regulation with respect to lack of participation in the qualifying period, 50 C.F.R. § 300.67(g)(2), an applicant must show the following:

Section (i): the applicant had a specific intent to operate a charter halibut fishing business in at least one year of the qualifying period (2004, 2005);

Section (ii): the applicant's specific intent was thwarted by a circumstance that was unavoidable, unique to the owner of the charter halibut fishing business, unforeseen and reasonably unforeseeable;

Section (iii): the circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred;

Section (iv): the applicant took all reasonable steps to overcome the circumstance.

## ANALYSIS

### **1. May Appellant make an unavoidable circumstance claim with respect to 2008 when he meets the minimum participation requirement in 2008 for a non-transferable permit?**

Appellant submitted evidence that in 2008, his participation in the charter halibut fishery was limited because of [REDACTED]. Appellant states that were it not for these health problems, he would have taken fifteen or more halibut logbook fishing trips in 2008. As it was, Appellant took six halibut logbook fishing trips, which meets the five-trip requirement for a non-transferable permit but not the fifteen trips required for a transferable permit.

Appellant may not make a claim pursuant to the unavoidable circumstance regulation, 50 C.F.R. § 300.67(g), with respect to his limited participation in the recent period (2008) for two reasons.

First, to make an unavoidable circumstance claim with respect to 2008, the applicant must meet the participation requirement for a charter halibut permit in the qualifying period (2004, 2005) and must *not* meet the participation requirement for a charter halibut permit in the recent period (2008). The regulation states:

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 charter halibut permits if the applicant [proves the elements of the

unavoidable circumstance claim with respect to his lack of participation in the recent period].<sup>36</sup>

Appellant does not meet either predicate to make an unavoidable circumstance claim for the recent period. He does not meet the participation requirement for the qualifying period (2004, 2005) and he does meet the participation requirement for the recent period (2008). Thus, he cannot make an unavoidable circumstance claim for the recent period.

The purpose of this requirement is to prevent an applicant from claiming unavoidable circumstances for *both* periods. The applicant has to meet the participation requirement for one period and then the applicant may claim an unavoidable circumstance with respect to the other period. Appellant, however, wants to claim unavoidable circumstances for both periods. The regulation is structured so an applicant cannot do that.

Second, and related, an applicant cannot use the unavoidable circumstance regulation to upgrade a permit, namely to receive a transferable instead of a non-transferable permit or to receive a second permit. The regulation, 50 C.F.R. § 300.67(g), explicitly states:

Unavoidable circumstance claims . . . 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 . . . .<sup>37</sup>

Appellant will not be excluded from the charter halibut fishery entirely if his unavoidable circumstance claim in the recent period is not recognized. If he proves his unavoidable circumstance claim in the qualifying period, he will receive a non-transferable permit. Appellant is seeking to use the unavoidable circumstance provision to change a non-transferable permit to a transferable permit. The unavoidable circumstance regulation expressly states that NMFS cannot do that.

Appellant states: "I am not trying to upgrade the number of permits issued, nor am I trying to change a non-transferable permit to a transferable one. I have not been issued a permit. There is nothing to upgrade or change. I am applying for a transferable permit in my application as an initial permit issuance. This is different from trying to change or upgrade an existing permit I might already have."<sup>38</sup>

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<sup>36</sup> 50 C.F.R. § 300.67(g)(1)(emphasis added). Those elements are in sections (i) to (iv), namely the applicant had a specific intent to participate in the recent period; it was thwarted by a circumstance that was unavoidable, unique, unforeseen and reasonably unforeseeable; the circumstance occurred; applicant took all reasonable steps to overcome the circumstance. 50 C.F.R. § 300.67(g)(1)(i) – (iv).

<sup>37</sup> 50 C.F.R. § 300.67(g).

<sup>38</sup> Letter from Appellant to OAA (Oct. 4, 2010).

The prohibition on using the unavoidable circumstance regulation from changing a non-transferable permit to a transferable permit indisputably applies to initial issuance. The process of initial issuance is the only process to which the prohibition could apply. After initial issuance, no one will be able to get a permit based on an unavoidable circumstance claim. After initial issuance, the only way a person will get a charter halibut permit is by transfer from a person who holds a transferable permit.

Appellant points to the section of the unavoidable circumstance regulation, 50 C.F.R. § 300.67(g)(2)(v)(B), that if an applicant proves the four elements of an unavoidable circumstance claim with respect to its lack of participation in the qualifying period, the applicant will receive a transferable permit if the applicant proves that it would likely have taken fifteen or more trips in the qualifying period (2004 or 2005).<sup>39</sup> Appellant argues that since it can prove those four elements with respect to its lack of participation in 2005, it should be able to receive a transferable permit.<sup>40</sup>

Looking at that section, 50 C.F.R. § 300.67(g)(2)(v)(B), in isolation, I can understand why Appellant makes the argument. But that provision is limited by the first sentence of the regulation, namely that an applicant cannot seek to receive a transferable permit under the unavoidable circumstance regulation if the applicant would receive a non-transferable permit without the claim. That provision is also limited by the structure of the unavoidable circumstance regulation, which prevents an applicant from claiming unavoidable circumstances in both periods.

**2. Does Appellant satisfy the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), the unavoidable circumstance regulation for persons that do not meet the minimum participation requirement in the qualifying period (2004, 2005)?**

An applicant that meets the participation requirement in the recent period (2008) may make a claim under the unavoidable circumstance regulation with respect to its lack of, or insufficient, participation in the qualifying period (2004, 2005).<sup>41</sup> Appellant took two bottomfish logbook fishing trips in 2005 and therefore does not meet the minimum participation requirement for operation of a charter halibut fishing business in 2005. I analyze whether Appellant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2) regarding the circumstances of his failure to meet the minimum participation requirement in 2005.

Section (i). Did Appellant have a specific intent to operate a charter halibut fishing business in 2005?

<sup>39</sup> Again, those four elements are in sections (i) to (iv), namely the applicant had a specific intent to participate in the recent period; it was thwarted by a circumstance that was unavoidable, unique, unforeseen and reasonably unforeseeable; the circumstance occurred; the applicant took all reasonable steps to overcome the circumstance. 50 C.F.R. § 300.67(g)(1)(i) – (iv).

<sup>40</sup> Letter from Appellant to OAA (Oct. 4, 2010).

<sup>41</sup> 50 C.F.R. § 300.67(g)(2).

Although the regulation simply refers to operating a charter halibut fishing business, and Appellant did operate a business, I interpret the reference to operating a charter halibut fishing business as meaning operating a charter halibut fishing business at a level sufficient to receive a permit.

At the beginning of the 2005 season, Appellant held the required ADF&G Business Owner License and the appropriate USCG license to operate a charter halibut fishing business. He had a vessel that was fully functional at the beginning of the season, or at least he had no reason to believe it was not. He had a brochure to attract clients. He had worked as a charter operator since 1992. He intended to continue, but he had just retired from federal employment and was ready to expand his charter business. In anticipation of the expansion, he hired a deckhand for the first time. By June 2005, he had some charter halibut trips booked. I conclude Appellant held a specific intent to operate a charter halibut business in 2005.

Section (ii). Was Appellant's intent to operate a charter halibut fishing business thwarted by a circumstance that was unavoidable, unique, unforeseen, and reasonably unforeseeable?

The engine breakdowns thwarted, or prevented, Appellant from operating his charter halibut fishing business at a level sufficient to receive a permit. The two major engine breakdowns were unavoidable, unique to Appellant, unforeseen and reasonably unforeseeable. Appellant had installed a new engine in VESSEL before the 2005 season. Appellant had no reason to anticipate two major breakdowns. Vessel breakdowns mid-season are a primary example of a circumstance that comes within the ambit of the unavoidable circumstance regulation. I conclude that Appellant meets this requirement.

Section (iii). Did the circumstance that thwarted Appellant's intent to operate a charter halibut fishing business actually happen?

The vessel breakdowns occurred.

Section (iv). Did Appellant take all reasonable steps to overcome the circumstance?

Appellant's business relied on Appellant being an owner-operator of his own vessel. Appellant promptly repaired the vessel after both breakdowns. I conclude that Appellant took all reasonable steps to overcome the circumstance.

Once an applicant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), the next question is whether the permit will be transferable or non-transferable permit.

### 3. Should Appellant receive a transferable or non-transferable permit?

To receive a transferable permit, an applicant who has shown an unavoidable circumstance in one year of the qualifying period must meet two requirements.

First, the applicant must meet the participation requirement in the recent period for a transferable permit: fifteen halibut logbook fishing trips with the same vessel in 2008.<sup>42</sup> The unavoidable circumstance in the qualifying period can excuse the lack of participation in the qualifying period and allow the applicant to be treated as though the applicant participated in the qualifying period. But an unavoidable circumstance in the qualifying period would not excuse an applicant from meeting the actual participation requirement for a transferable permit in the recent period, namely fifteen halibut logbook fishing trips with the same vessel in 2008.<sup>43</sup>

Second, if the applicant took fifteen halibut logbook fishing trips in 2008, the applicant must then show that it would likely have taken fifteen or more bottomfish logbook fishing trips in the year of the qualifying period for which the applicant had insufficient participation.<sup>44</sup>

Appellant does not meet the first requirement to receive a transferable permit. Appellant took six halibut logbook fishing trips in 2008, which is less than fifteen. I therefore do not analyze whether Appellant meets the second requirement. I conclude Appellant should receive a non-transferable permit.

### 4. What is the proper angler endorsement on Appellant's permit?

Once an applicant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), section (v) states that the permit will have an angler endorsement of four unless the applicant shows that it would likely have taken a trip in 2004 or 2005 with a higher number of anglers.

Appellant seeks a permit with an angler endorsement of four.<sup>45</sup> In addition to his request, Appellant did not take any trips with more than four anglers in 2004 or 2005.<sup>46</sup> Further, the evidence that Appellant submitted as to likely, additional trips in 2005 do not show any trips with a party greater than four.<sup>47</sup> Therefore, Appellant's charter halibut permit should be endorsed for four anglers.

Appellant emphasizes his long tenure in the charter industry, the substantial investment he made in a new boat in 2006, the unforeseeability of his health problems, and the need for him to be able to sell the boat with a permit to avoid a large financial loss.<sup>48</sup> I

<sup>42</sup> 50 C.F.R. § 300.67(d)(1)(ii).

<sup>43</sup> 50 C.F.R. § 300.67(d)(1)(ii).

<sup>44</sup> 50 C.F.R. § 300.67(g)(2)(v)(B).

<sup>45</sup> Letter from Appellant to RAM (Mar. 17, 2010).

<sup>46</sup> Email from NMFS Computer Specialist to Mary Alice McKeen (Sep. 13, 2011).

<sup>47</sup> Attachments to Letter from Appellant to RAM (May 11, 2010).

<sup>48</sup> Letter from Appellant to OAA (Aug. 19, 2010).

do not have authority to consider those factors in deciding this appeal. I only have authority to determine whether, under the regulations as adopted, Appellant is eligible to receive a permit and, if so, what type and with what angler endorsement. I conclude that Appellant meets the requirements in federal regulation for a non-transferable charter halibut permit with an angler endorsement of four for use in IPHC Area 2C.

#### CONCLUSIONS OF LAW

1. Appellant may not seek a transferable permit under the unavoidable circumstance regulation, 50 C.F.R. § 300.67(g), because he meets the minimum participation requirement in 2008 for a non-transferable permit.
2. Appellant does not meet the participation requirement in the recent period for a transferable permit, namely fifteen halibut logbook fishing trips with the same vessel, 50 C.F.R. § 300.67(d)(1)(ii).
3. Appellant satisfies the requirements in sections (i) through (iv) of the unavoidable circumstances regulation, 50 C.F.R. § 300.67(g)(2), with respect to his insufficient participation in one year in the qualifying period (2005).
4. Appellant qualifies for a non-transferable charter halibut permit, endorsed for four anglers, for use in IPHC Area 2C.

#### ORDER

The IAD that is the subject of this appeal is VACATED. RAM is directed to issue a non-transferable charter halibut permit, endorsed for four anglers, for use in IPHC Regulatory Area 2C to Appellant. This Decision is effective on November 21, 2011, unless by that date the Regional Administrator reverses, remands, or modifies the Decision pursuant to 50 C.F.R. § 679.43(k), (o).

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 October 31, 2011, 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 judge, and must be accompanied by a written statement in support of the motion.

  
Mary Alice McKeen  
Administrative Judge

Date issued: October 21, 2011