



The appeal under review was filed by [REDACTED] doing business as (dba) [REDACTED] (Appellant). Appellant is appealing an Initial Administrative Determination (IAD) issued by NMFS's Restricted Access Management Program (RAM). In the IAD, RAM denied Appellant's application for a Charter Halibut Permit (permit or CHP).

On March 31, 2010, Appellant applied for a CHP pursuant to the Charter Halibut Limited Access Program (CHLAP).<sup>2</sup> The application was filed with RAM, who is responsible for reviewing and determining whether an applicant will receive a permit or permits.

In response to Appellant's application, on May 3, 2010, RAM sent Appellant a Notice of Opportunity to Submit Evidence (Notice).<sup>3</sup> In the Notice, RAM advised Appellant the Official Record showed he met the CHLAP requirements for 2008 by reporting sixteen charter halibut logbook trips to the Alaska Department of Fish and Game (ADF&G). However, RAM also stated in the Notice that Appellant did not meet the CHLAP requirements for 2004 or 2005, since he did not have at least five properly reported logbook trips in 2004 or 2005. RAM acknowledged Appellant's claim that he was forced to lease a vessel, [REDACTED] (Leased Vessel), because his own charter boat, the [REDACTED] (S Vessel), was under repair. Appellant claimed he should be credited with the logbook trips logged in the logbook issued to Leased Vessel's owner (Lessor), ADF&G advised Appellant the logbook had to be issued to Lessor. RAM further acknowledged Appellant's claim that due to unavoidable circumstances, he should receive a CHP. RAM set a June 2, 2010 deadline for Appellant to submit evidence to show he met participation requirements in 2004 or 2005.

On May 28, 2010, Appellant responded to the Notice. Appellant submitted information about Leased Vessel in the form of a marine survey and marine insurance. Appellant also submitted affidavits from clients which Appellant contends show he took four more bottomfish trips than reflected in ADF&G records.<sup>4</sup>

On September 15, 2010, RAM sent Appellant the IAD which is the subject of this appeal. In the IAD RAM denied Appellant a CHP. RAM reasoned Appellant did not meet the basic participation requirements for one of two periods of participation, namely five or more qualifying charter trips in 2004 or 2005. RAM reiterated that Appellant did meet

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<sup>2</sup> Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A.

<sup>3</sup> Original File Tab.

<sup>4</sup> Original File Tab, Charter Halibut Permit Application, Instructions for Processing Response, 30 Day Notice of Opportunity to Submit Evidence, signed May 28, 2010, with attachments.

the participation requirements for 2008. In not crediting Appellant with Lessor's logbook RAM reasoned:

You are claiming that you should be credited with the 2005 logbook fishing trips reported in the logbook issued by ADF&G to [Lessor under his business name]. However, you were not the person that ADF&G issued the business owner license that authorized the logbook fishing trips claimed. Therefore, RAM cannot credit you with those logbook trips.<sup>5</sup>

RAM noted Appellant had the right to appeal the IAD to OAA, and stated only OAA can resolve claims based on unavoidable circumstances.

On November 8, 2010, Appellant timely filed his appeal of the IAD with OAA.<sup>6</sup> On November 29, 2010, NAO sent Appellant a letter advising Appellant that if he wished to add additional information to the record to support his appeal, he should do so by December 20, 2010. On December 20, 2010, Appellant provided NAO with additional statements in support of his appeal. In his appeal paperwork, Appellant asserts three central arguments: one, that he should be credited with logbook trips he operated on Leased Vessel; two, he should be credited with four charter trips he took with S Vessel but not acknowledged in ADF&G records, and; three, an unavoidable circumstance, namely losing an engine on S Vessel, is a basis for him to receive a CHP.

I have determined that the information in the record is sufficient to render a decision.<sup>7</sup> Accordingly, I have closed the record and issue this Decision. I acknowledge Appellant's request for a hearing. The procedural regulations applicable to this appeal, allow me to "[i]ssue a decision on the merits...if the record contains sufficient information on which to reach final judgment."<sup>8</sup> Further, "A hearing will not be ordered on factual issues that are not determinative with respect to the action requested," and there must be genuine and substantial issues of adjudicative fact to be resolved at a hearing.<sup>9</sup> There is sufficient evidence in the record to resolve this appeal....

## ISSUES

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<sup>5</sup> Original File Tab, IAD, page 3.

<sup>6</sup> Pleadings Tab, letter dated November 10, 2010 with attachments.

<sup>7</sup> See 50 C.F.R. § 679.43(g)(2).

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

<sup>9</sup> 50 C.F.R. § 679.43(g)(3).

I will first decide whether Appellant is eligible for a CHP under what sometimes are referred to as the “basic requirements.” I thus must consider:

Did Appellant prove by a preponderance of the evidence that he reported at least five logbook fishing trips for 2004 or 2005?

If the answer to that Question is “no,” Appellant is not eligible for a permit under the basic requirements and I will consider whether Appellant is eligible for a permit under the unavoidable circumstances provisions of the CHLAP regulations. That analysis involves the following inquiries:

1. Did Appellant prove by a preponderance of the evidence that he held the specific intent to operate a charter halibut fishing business during 2005?
2. If the answer to Question 1 is “yes,” did Appellant prove by a preponderance of the evidence that in 2005 he suffered an “unavoidable circumstance” that “actually occurred.”
3. If the answer to Question 2 is “yes,” did Appellant prove by a preponderance of the evidence his specific intent was thwarted by a unique, unforeseen, and reasonably unforeseeable circumstance.
4. If the answer to Question 3 is “yes,” Appellant has met his burden of establishing an unavoidable circumstances claim, and is eligible for a permit.]

#### FINDINGS OF FACT

1. Since 1984, Appellant has been a licensed captain.<sup>10</sup>
2. Since 1997, Appellant has operated his charter business.<sup>11</sup>
3. In 2005, Appellant operated both S Vessel and Leased Vessel.<sup>12</sup>
4. Appellant leased Leased Vessel from Lessor.<sup>13</sup>
5. Appellant operated S Vessel between September and November 2005.<sup>14</sup>

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<sup>10</sup> Pleadings Tab, Appellant’s affidavit dated March 30, 2010 attached to Appellant’s appeal dated November 10, 2010.

<sup>11</sup> Pleadings Tab, Appellant’s affidavit dated March 30, 2010 attached to Appellant’s appeal dated November 10, 2010.

<sup>12</sup> Pleadings Tab, letter dated November 8, 2010 attached to Appellant’s appeal dated November 10, 2010.

<sup>13</sup> Pleadings Tab, letter dated November 8, 2010 attached to Appellant’s appeal dated November 10, 2010.

6. In the summer of 2005, S Vessel lost an engine and was not operable and therefore Appellant did not use it for charter fishing during most of the summer months.<sup>15</sup>
7. In August 2005, Appellant had a new engine installed in S Vessel.<sup>16</sup>
8. For 2005, Appellant reported three logbook fishing trips to ADF&G.<sup>17</sup>
9. In 2005, Appellant took four charter fishing trips on S Vessel which were not properly reported to ADF&G as bottomfish logbook fishing trips.<sup>18</sup>
10. In 2005, Appellant, on behalf of Lessor, reported nine logbook fishing trips to ADF&G.<sup>19</sup>
11. For 2008, Appellant reported sixteen logbook fishing trips to ADF&G.<sup>20</sup>

#### PRINCIPLES OF LAW

The Official Record is the information NMFS prepared regarding participation in charter halibut fishing. NMFS used the Official Record in implementing the CHLAP, including evaluating applications for Charter Halibut Permits.<sup>21</sup>

“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.”<sup>22</sup>

To qualify for a permit, an applicant must hold an ADF&G Business License (i.e., business registration, sport fishing business owner license, sport fish business license, or ADF&G business license) that was also the license that authorized qualifying fishing trips (i.e., logbook fishing trips that could be used to meet the minimum participation requirements to qualify for a CHP).<sup>23</sup>

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<sup>14</sup> Pleadings Tab, letter dated November 8, 2010 attached to Appellant’s appeal dated November 10, 2010; Pleadings Tab, Appellant’s affidavit dated March 30, 2010 attached to Appellant’s appeal dated November 10, 2010.

<sup>15</sup> Pleadings Tab, email message dated November 2, 2010 attached to Appellant’s appeal dated November 10, 2010; Pleadings Tab, Appellant’s affidavit dated March 30, 2010 attached to Appellant’s appeal dated November 10, 2010; Pleadings Tab, Appellant’s statement dated December 16, 2010.

<sup>16</sup> Pleadings Tab, Appellant’s affidavit dated March 30, 2010 attached to Appellant’s appeal dated November 10, 2010.

<sup>17</sup> Original File Tab, Official Record provided to NAO on May 2, 2011.

<sup>18</sup> Pleadings File Tab, Appellant’s Statement dated November 8, 2010, page 2 and Exhibit 6.

<sup>19</sup> Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A; Original File Tab, 2005 Lessor Vessel logbook record generated March 4, 2010.

<sup>20</sup> Original File Tab, Official Record provided to NAO on May 2, 2011.

<sup>21</sup> See 50 C.F.R. § 300.67(f)(5); 75 Fed. Reg. 554, 556 (January 5, 2010).

<sup>22</sup> 50 C.F.R. § 300.67(f)(1).

<sup>23</sup> 50 C.F.R. § 300.67(b)(1) and (3), and (f)(4).

Among the threshold criteria for obtaining a permit to operate a charter halibut fishing business, is participation in the industry in two time periods, the *qualifying period*, 2004 or 2005, and the *recent participation period*, 2008. At a minimum, to be eligible for a permit, an applicant must timely properly report five logbook fishing trips in an official logbook to ADF&G in 2004 or 2005 and 2008. This threshold criteria may be referred to as the basic participation requirements.<sup>24</sup>

A “logbook fishing trip” means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to ADF&G in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip.<sup>25</sup> The time limit to submit data about logbook fishing trips was within eight to fourteen days of a qualifying trip, as delineated in the logbooks.<sup>26</sup>

A “bottomfish logbook fishing trip” means a logbook fishing trip in the qualifying period that was reported to 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.<sup>27</sup>

A “halibut logbook fishing trip” means a logbook fishing trip in the recent participation period that was reported to 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.<sup>28</sup>

If an applicant for a CHP cannot meet the participation requirements in one period, as in this case for the qualifying period of 2005, but does meet the participation requirements for the other period, 2008, then the applicant may still be eligible for a CHP under the exception to the participation requirements known as the “unavoidable circumstances” rule.<sup>29</sup>

Under the unavoidable circumstances rule as it applies to this case, an applicant for a CHP may be eligible for a permit if:

- (1) he met the participation requirements for 2008, but not for 2005;
- (2) he specifically intended to operate a charter halibut fishing business in 2005;

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<sup>24</sup> See 50 C.F.R. § 300.67(a) and (b), and Notes to Final Rule, 75 Fed. Reg. 554, 554-555 (January 5, 2010).

<sup>25</sup> 50 C.F.R. § 300.67(f)(4).

<sup>26</sup> Available at: <http://alaskafisheries.noaa.gov/appeals/default.htm>.

<sup>27</sup> 50 C.F.R. § 300.67(f)(2).

<sup>28</sup> 50 C.F.R. § 300.67(f)(3).

<sup>29</sup> See 50 C.F.R. § 300.67(g)(2).

(3) his intent was thwarted by an unavoidable, unique, unforeseen, and reasonably unforeseeable circumstance that actually occurred, and;

(4) he took all reasonable steps to overcome the unavoidable circumstance.<sup>30</sup>

If Appellant proves the requirements of an unavoidable circumstance claim as outlined above, then he will receive a CHP.<sup>31</sup>

ANALYSIS

**Did Appellant prove by preponderance of the evidence that he reported at least five logbook fishing trips for 2005?**

The Official Record shows Appellant reported three logbook fishing trips to ADF&G for 2005. Since that is less than the five-trip minimum, Appellant cannot prevail under the basic requirements for a permit.

I understand Appellant believes he should be credited with four more bottomfish trips for 2005 than reflected in the Official Record. Appellant submitted affidavits from anglers in an attempt to meet his burden of showing error in the Official Record. I have read those affidavits as well as the entire record and case file with care. Appellant notes four entries in his logbook where he entered “none” under “bottomfish fishing.” He explains that he took a short cut and wrote “none” instead of zeros.

While I believe Appellant took those trips and have so found, I cannot accept Appellant’s explanation as a basis to change the Official Record. Instructions explaining how to complete the 2004 Saltwater Charter Vessel Logbooks were provided in the logbooks.<sup>32</sup> With respect to recording bottomfish trips, those instructions provided as follows:

BOTTOMFISH	
<p>Primary Stat Area  (Incl. Halibut)</p>	<p>The 6-digit area code where you caught most of the bottomfish on this trip. If you fished for bottomfish, but caught none, write the 6-digit code for the location fished the most time on this date and trip.</p>
<p>Maximum Rods Fished</p>	<p>The maximum number of rods/lines fished when targeting</p>

<sup>30</sup> See 50 C.F.R. § 300.67(g)(2).

<sup>31</sup> 50 C.F.R. § 300.67(g)(2)(v).

<sup>32</sup> ADF&G Saltwater Logbooks for the years 2001 through 2011 are displayed on the NMFS, Alaska Region, website at: <http://alaskafisheries.noaa.gov/appeals/default.htm>.

	bottomfish ( <b>incl. halibut</b> ) and targeting salmon and halibut simultaneously. . . .
No. Boat Hours Fished	The number of boat hours that at least one rod/line was targeting bottomfish ( <b>incl. halibut</b> ) and targeting salmon and bottomfish simultaneously. . . .
Fish Kept & Released	The total number of fish kept and released by client and crew. . . . <b>Halibut kept and released is no longer being collected in logbooks, but effort continues to be collected. . . .</b>
<b>TYPES AND EXAMPLES – RODS, BOAT HOURS</b>	
What species group was targeted? <b>Example 1:</b> One Target Salmon	. . . NOTE: If bottomfish are caught when targeting salmon only, record the number of bottomfish in the appropriate columns in the bottomfish section. . . .
<b>Example 3:</b> Two Targets Salmon <u>and</u> Bottomfish ( <b>including halibut</b> ) Simultaneously (i.e., mooching)	. . . [R]ecord the maximum number of rods and boat hours spent fishing simultaneously for salmon and bottomfish in the appropriate columns in BOTH the salmon and bottomfish sections.
<b>Example 4:</b> A combination of any of the above	. . . [R]ecord the maximum number of rods and boat hours spent targeting salmon AND targeting both salmon and bottomfish (including halibut) simultaneously in the appropriate columns in the salmon section, and the maximum number of rod and boat hours spent targeting bottomfish AND targeting both salmon and bottomfish simultaneously in the appropriate columns in the bottomfish section.

<b>SPECIAL NOTES AND INSTRUCTIONS</b>	
“Halibut”	The number of halibut kept and released is no longer requested in the logbook. However, we ask that you continue to <b>record your effort</b> . Complete the first five columns on the far left of each logbook page and the first three columns under the Bottomfish section (state area, no. rods, and boat hrs).

There were similar instructions for 2005 logbooks. If Appellant had followed the written instructions supplied with the Saltwater Charter Vessel Logbook, he would have properly recorded and reported his charter halibut fishing business activity. He also would have met the five-trip minimum to qualify for a permit.

I recognize Appellant's argument concerning misinformation from ADF&G about in whose name a logbook could be issued. ADF&G personnel believe their office did not give accurate advice to Appellant concerning logbooks: “[B]eing the first year of licensing it’s possible that [ADF&G] staff were unclear on how to issue a logbook for a vessel when that vessel didn’t belong to the business getting licensed...In [Appellant’s] case, he was told [by ADF&G personnel] he couldn’t get a business license, that the logbook would have to be issued to the business that owned the vessel: [Lessor’s business].”<sup>33</sup> While the record does not show if the ADF&G employee from whom Appellant submitted statements is an official who can speak on behalf of the state agency, even if she is not, the statements certainly support Appellant’s arguments on appeal.

However, NMFS has stated quite clearly that it would not use ADF&G misinformation/miscommunication with CHP applicants as a basis to change the Official Record. Indeed, in this appeal, the Official Record is correct. ADF&G issued a logbook pursuant to Lessor’s business license; therefore, when Appellant reported trips to ADF&G, he did so on behalf of Lessor, not his business. The Official Record comports with the CHLAP regulations, section 300.67(b)(1)(ii), that provides the person to whom NMFS issues a CHP is the one to whom ADF&G “issued the ADF&G Business Owner Licenses that authorized logbook fishing trips that meet the minimum participation requirements.”<sup>34</sup> The link between the business license and the logbook is Lessor’s business license under which the logbook relevant to this appeal was issued. It was not Appellant’s business license and logbook issued pursuant to Appellant’s business license.

<sup>33</sup> Pleadings Tab, email message dated November 2, 2010 attached to Appellant’s appeal dated November 10, 2010.

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

NAO may not deviate from NMFS's policy, since there is nothing in the CHLAP regulations that authorizes NAO to modify regulatory requirements or act out of a sense of equity. In order to provide Appellant relief in this appeal, the CHLAP regulations would have to have a provision to by-pass the requirements of section 300.67(b)(1)(ii); there is not. Accordingly, the IAD is consistent with applicable regulations. Therefore, unless Appellant can establish eligibility for a CHP under the unavoidable circumstance provisions of the CHLAP regulations, he will not receive a permit by this Decision.

**Did Appellant prove by a preponderance of the evidence that he specifically intended to operate a charter halibut fishing business in 2005?**

Appellant did in fact operate a charter fishing business in 2005. Therefore, I conclude that Appellant held the specific intent to operate a charter halibut fishing business in 2005. I turn, then, to the next inquiry in the unavoidable circumstances analysis.

**Did Appellant prove by a preponderance of the evidence that in 2005 he suffered an "unavoidable circumstance" that "actually occurred?"**

Appellant met his burden of proving one of his engines on his charter vessel, S Vessel, did not work in the Summer of 2005 and was not replaced until August 2005. The breakdown of the charter vessel is typically considered an unavoidable circumstance and I so find here.

This ends the sections of the original Decision which I incorporate into this Decision on Reconsideration. What remains is the issue of whether Appellant's specific intent was thwarted by the unavoidable circumstance. In the Decision, I decided it did not. For the reasons that follow, I reverse my opinion on that portion of Appellant's unavoidable circumstance claim.

**Did Appellant prove by a preponderance of the evidence his specific intent was thwarted by a unique, unforeseen, and reasonably unforeseeable circumstance?**

The fact that Appellant suffered from an unavoidable circumstance in that his vessel was inoperable due to no fault of his own is supported by a preponderance of the evidence, as discussed above. So while Appellant's vessel was inoperable, he could not provide charters with his own vessel. Appellant did nevertheless take serious steps to operate; Appellant leased a vessel appropriate for chartering and reasonably attempted to obtain a logbook associated with his business license for the leased vessel. He was not able to get such a logbook due to some difficulties on the part of ADF&G. Once Appellant used Lessor's logbook, Appellant really was not operating his business at all. Under the totality of the circumstances, I find Appellant's broken vessel prevented Appellant from operating his charter business. It is true that he was chartering in the summer of 2005, but given the totality of facts, I find he was chartering on behalf of Lessor; again, due to no fault of his own.

Once Appellant's vessel was repaired around the end of August 2005, Appellant resumed his own charter operations. In fact, Appellant provided charters on his repaired vessel between September 2005 and November 2005. Given the totality of the circumstances and based on the unique facts of this case as well as previous NAO decisions granting permits under the unavoidable circumstance provision, I conclude Appellant has shown by a preponderance of the evidence his specific intent was thwarted by a unique, unforeseen, and reasonably unforeseeable circumstance.

Since Appellant has proven by a preponderance of the evidence that he meets the requirements of the unavoidable circumstances provision of the CHLAP regulations, I must now determine what type of permit, transferable or nontransferable, and the number of anglers for which the permit will be endorsed.

**Did Appellant prove he would have taken at least five but less than fifteen logbook trips in 2005 but for the unavoidable circumstance and therefore is eligible for a nontransferable permit?**

To qualify for a transferable CHP, among the requirements is that the applicant prove he took fifteen or more qualifying trips during both the qualifying year and participation year.<sup>35</sup> RAM and Appellant are in agreement that in 2008 Appellant recorded sixteen halibut logbook trips. Therefore, I find he exceeds the number of trips needed in 2008 to qualify for a transferable permit. I turn then to the number of trips Appellant would likely have taken in 2005.

Appellant has shown by a preponderance of the evidence and I find that in 2005, but for the unavoidable circumstances, Appellant would have taken twelve charter halibut trips. I am persuaded by the number of charter trips Appellant took in 2005, albeit not necessarily ones technically for his business. On behalf of Lessor, Appellant completed nine bottomfish logbook trips.<sup>36</sup> In addition, on his own vessel in 2005, Appellant properly reported to ADF&G three bottomfish logbook trips. Thus, the evidence shows but for the unavoidable circumstance, Appellant likely would have taken twelve (9 + 3) bottomfish logbook trips. Since Appellant would likely have taken at least five but not as many as fifteen logbook trips in 2005, he is eligible for a nontransferable permit.<sup>37</sup>

**Did Appellant prove that the greatest number of anglers he would likely have taken on charter fishing trips in 2005 was six, and therefore his nontransferable permit should be endorsed for five anglers?**

An applicant can be awarded a permit with an angler endorsement for the greatest number of anglers he likely would have taken had it not been for the unavoidable circumstances.<sup>38</sup> Based on the twelve trips Appellant took in 2005 shown in the

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

<sup>36</sup> Original File Tab, 2005 Saltwater Charter Logbook Data generated 3/4/2010.

<sup>37</sup> See 50 C.F.R. § 300.67(b) and (d).

<sup>38</sup> 50 C.F.R. § 300.67(g)(2)(v)(B). In the Proposed Rule NMFS explained that in a section 300.67(g)(2) situation, if an appellant proves his unavoidable circumstances claim, then NMFS could

record, I find as a fact the highest number of anglers Appellant would have taken on charter halibut trips in 2005 is six.<sup>39</sup> Therefore, Appellant's permit shall be endorsed for six anglers.

After carefully reviewing the file, including the Decision and Appellant's Motion for Reconsideration, I grant Appellant's Motion for Reconsideration and issue this Decision on Reconsideration. The original Decision dated November 16, 2011 is vacated.

### CONCLUSIONS OF LAW

Appellant held the specific intent to operate a charter halibut business during 2005.

In 2005 Appellant suffered "unavoidable circumstances" that "actually occurred."

Appellant's specific intent was thwarted by the unavoidable, unique, unforeseen, and reasonably unforeseeable circumstances.

The IAD is consistent with the CHLAP regulations; however, Appellant has shown by a preponderance of the evidence that he is eligible under the unavoidable circumstances provision of the CHLAP regulations for a nontransferable CHP with an angler endorsement of six.

### ORDER

Appellant's motion for reconsideration is granted. NAO's decision dated November 16, 2011 is vacated.

The IAD dated September 15, 2010 is vacated. RAM is ordered to issue Appellant a nontransferable charter halibut permit endorsed for six anglers, for use in IPHC regulatory area 3A.

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not use logbook data to determine the number or type (transferable or nontransferable) of permits and the number of anglers for which the permit would be endorsed. Thus, NMFS created a default provision of one nontransferable permit with an angler endorsement of four, or, if an applicant can so prove a different permit(s) based on the number of vessels, number of trips and highest number of anglers an applicant can prove he likely would have taken in 2004 or 2005. "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." 74 Fed. Reg. 18178, 18187 (2009).

<sup>39</sup> Original File Tab, email exchange between NAO and NMFS's Application Group dated April 29, 2011 and May 2, 2011.

