



Decedent did not report the trips to ADF&G because of an unavoidable circumstance, namely mental health problems and depression, which eventually led to Decedent's suicide in May 2011.

## ANALYSIS

Appellants did not make an unavoidable circumstance claim in their appeal. But assuming that the facts, as stated by Appellants in their motion for reconsideration are true, Appellants may not receive a third permit based on their unavoidable circumstance claim for two reasons.

First, it appears from the record that Decedent operated his charter halibut fishing business as an individual, not a corporation. The Decedent's business licenses for 2005 and 2008 are as a sole proprietor and Decedent was the only owner.<sup>7</sup> Under the charter halibut regulation, for an applicant to be a successor-in-interest to a deceased individual, the applicant must be the personal representative of the estate of the deceased individual. The personal representative would then state who, according to the duties of the personal representative, is the person entitled to receive the permit that would have been issued to the deceased.<sup>8</sup>

Neither Appellant is the personal representative of the estate of Decedent and, on this record, Appellants are not the persons who would be entitled to receive this asset of Decedent. On this record, Appellants are not heirs of Decedent or creditors of Decedent. Even if Appellants could surmount this barrier, or even if Decedent operated in both participation periods as a corporation, which the record does not at all suggest, Appellants face a second, insurmountable, barrier.

Second, Appellants may not receive a third permit under the unavoidable circumstance regulation because they are already receiving two permits without their unavoidable circumstance claim. The unavoidable circumstance provision in the charter halibut regulation 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>9</sup>

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<sup>7</sup> State of Alaska, Division of Corporation Printout re Decedent's Business Licenses, Attachment C-3 and C-4 to Appellant's Application for Charter Halibut Permit(s), dated March 23, 2010.

<sup>8</sup> 50 C.F.R. § 300.67(b)(1)(iii)(B).

<sup>9</sup> 50 C.F.R. § 300.67(g).

Appellants will not be excluded from the charter halibut fishery if their unavoidable circumstance claim is not recognized. Appellants are seeking to increase the number of permits that they are receiving. Since Appellants are receiving two permits, they may not receive a third permit under the unavoidable circumstance regulation.

ORDER

I conclude that Appellants have not shown that the Decision contains a material error of law or fact in concluding that Appellant does not meet the requirements to receive a third permit. Accordingly, I deny Appellant's Motion for Reconsideration. The new effective date of the Decision is April 9, 2012, unless the Regional Administrator reverses, modifies or remands the Decision pursuant to federal regulation 50 C.F.R. § 679.43(k) and (o).

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Mary Alice McKeen  
Administrative Judge

Date issued March 8, 2012