U.S. Department
of Transportation
**Federal Aviation
Administration**

MAR 26 2013

Mr. Jason Kulbeth
Director of Operations
NorthStar Trekking LLC
PO Box 32540
Juneau, AK 99803

Dear Mr. Kulbeth:

This letter is in response to your request for legal interpretation of the phrase "necessary only for takeoff or landing" as it applies to the Auke Bay departure and arrival route to and from the Juneau, Alaska, airport.

In your letter you state that the Auke Bay arrival and departure route is a published helicopter route that has been in place for over 15 years. You also state that the route has an overwater portion which would trigger the life preserver and helicopter float requirements of 14 C.F.R. §§ 136.9 and 136.11. You state that it is your company's policy to fly the overwater portion of the route at an altitude that keeps your helicopters within power off gliding distance to the shoreline and that if the FAA determines that the route is not necessary for takeoff or landing "the resulting loss of the route creates a very congested singular route to and from the airport when cloud ceilings are less than 4000 [feet]."

Section 136.9 requires occupants of commercial air tours operated over water to wear life preservers from takeoff until the flight is no longer over water. Exceptions to the requirement to wear life preservers, instead allowing them to be accessible to passengers, are made for aircraft equipped with floats, multi-engine aircraft meeting performance requirements, and for airplanes operated within power-off gliding distance to the shoreline. *See* § 136.9(b). No life preservers are required if the "overwater operation is necessary only for takeoff or landing." § 136.9(c).

Section 136.11 requires commercial air tour operators that operate over water to equip their single-engine helicopters or multi-engine helicopters that cannot meet performance requirements with fixed floats or an inflatable flotation system. Exceptions are made for flights when the "helicopter is over water only during the takeoff or landing portion of the flight," or when "the helicopter is operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water."[1] *See* § 136.11(c).

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[1] Although § 136.11 does not use the phrase "necessary only for takeoff or landing," for clarity, when we use that phrase in this interpretation we mean it to also apply to the phrase in § 136.11 "helicopter is over water only during the takeoff or landing portion of the flight." This usage is consistent with the intent of the rule. *See* National Air Tour Safety Standards Final Rule, 72 Fed. Reg. 6884, 6904 (Feb. 13, 2007) ("Under this rule,

If the Auke Bay route is determined to be "necessary only for takeoff or landing" then, assuming that the air tour is only over water when following that route, your operations would be excepted from the life preserver and helicopter float requirements discussed above. Based upon a review of prior legal interpretations and FAA policy we conclude that, although the FAA has not established a specific definition of "necessary only for takeoff or landing" in regulation, conducting an operation along the Auke Bay arrival route does not, in and of itself, make that portion of the operation necessary for takeoff or landing as contemplated by §§ 136.9 or 136.11.

Section 91.119, which establishes the general minimum safe altitudes for part 91 operations, has a similar exception in the rule allowing operations below the established minimum altitudes when necessary for takeoff or landing. In interpreting § 91.119, relating to minimum safe altitudes over congested areas, the FAA noted longstanding policy on the need for pilots to "'take full advantage of the performance capabilities of his aircraft so as to spend as little time as possible at altitudes below the minimums established for cruising flight. The "where necessary" language [of § 91.119] achieves this result simply and directly.'" *See* Legal Interpretation to Frank J. Deighan, from Donald Byrne, Assistant Chief Counsel (Oct. 30, 1997) (citing 19 Fed. Reg. 4602 (July 27, 1954)). This letter stated that "one must determine whether that portion of the flight is necessary to permit the pilot to transition between the surface and the en route or pattern altitude in connection with a takeoff or a landing." *Id.*

Additionally, the FAA has found that when an aircraft on an arrival route is assigned an altitude for traffic separation 30 miles from the shoreline, and the aircraft's performance does not require that altitude for landing, the altitude assignment is not necessary for takeoff or landing for purposes of § 135.183 (performance requirements for land aircraft operated over water). *See* Legal Interpretation to Brian Kilcullen, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Feb. 7, 2012).

Whether a maneuver is necessary for takeoff or landing is by necessity a factual determination. *See* Legal Interpretation to Kilcullen (Feb. 7, 2012). After reviewing the Juneau Commercial Operators Letter of Agreement (LOA) revision 18, the Juneau Sectional Aeronautical Chart, and the LOA between Juneau Airport Traffic Control Tower and Temsco Helicopters, Coastal Helicopters, and NorthStar Trekking (effective May 6, 2011), it is clear that the entire Auke Bay arrival route cannot be deemed "necessary only for takeoff or landing" for purposes of §§ 136.9 and 136.11.

This finding is based on the fact that the Auke Bay route extends for several miles from the airport. For example, the distance from the Juneau runway to Auke Cape, a landmark to which helicopters on the Auke Bay route are directed, is greater than 3 miles and the route continues for several more miles past this point. A helicopter crossing Auke Cape while using the Auke Bay arrival route has not yet entered the Juneau airport traffic pattern in which helicopters are requested to fly at 500' MSL. Therefore, entry onto the Auke Bay

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helicopter floats for commercial air tours only apply if a portion of the flight is over water, except if that portion is during takeoff or landing only.").

route is not necessary to transition between the surface and the enroute altitude and any assigned altitudes along the route would be for traffic separation purposes.

Therefore, although the Auke Bay route is not necessary for takeoff or landing, because you fly the overwater portion of the route within power-off gliding distance to the shoreline you have options regarding whether to equip with floats and whether passengers wear life preservers.[2] If your helicopters are not equipped with floats then passengers must wear life preservers from before takeoff until the flight is no longer over water. *See* § 136.9(a)-(b). Alternatively, if you equip your helicopters with floats then life preservers would need to be readily accessible to passengers and would not need to be worn. *See id.*

Finally, we note that this determination does not result in the "loss of the route" for commercial air tour operators as you allege in your letter. This interpretation only clarifies that the Auke Bay route is not "necessary only for takeoff or landing" for the purposes of §§ 136.9 and 136.11 and operators would therefore need to comply with the requirements contained therein. It does not prohibit use of the route which we recognize as serving important air traffic control purposes.

This response was prepared by Dean E. Griffith, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel. It was coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for International
Law, Legislation and Regulations

[2] This answer assumes that you are operating either single-engine helicopters or multi-engine helicopters that do not meet the performance requirements of §§ 136.9(b)(3) and 136.11(a)(2). We make this assumption because if your helicopters met the performance requirements of those sections floats would not be necessary and life preservers could be readily accessible to passengers rather than worn. *See id.*