

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of

Appellant

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Appeal No. 10-0056

ORDER DENYING
MOTION for
RECONSIDERATION

On February 11, 2011 I issued a Decision in this case. On the same date, Appellant sent NAO an e-mail message stating: "What NOAA seems to miss is the State logbook did not require charter operators to report halibut caught in 2004 and therefore I am in compliance with what was required of me. I hereby choose to appeal your decision of 2/11/11." I construe the e-mail message as a motion for reconsideration and deem it properly filed.

NAO's policy requires motions for reconsideration to state material matters of law or fact that were misunderstood or overlooked by the Administrative Judge in rendering his or her decision. I have carefully reviewed my February 14, 2011, Decision and conclude that Appellant's message does not show error of law or fact. Therefore, Appellant's motion is denied. However, I have corrected Finding of Fact 1 on Page 5 of the Decision to clarify that Appellant's lack of logbook submissions to ADF&G pertains to 2004 and 2005 only, not to 2008. Attached is the corrected Page 5 to the Decision. The attached corrected Page 5 shall be substituted for the original Page 5 of the Decision dated February 11, 2011.

Pursuant to NAO policy, the effective date of the Decision is now February 18, 2011. The Regional Administrator has thirty days from February 18, 2011 for review of the Decision pursuant to 50 C.F.R. § 679.43(o).


Eileen G. Jones
Chief Administrative Judge

Date Issued: February 18, 2011

Appeal No. 10-0056

permit because he meets the criteria for an "unavoidable circumstance" claim. That is, Appellant proves that he one, participated during the qualifying period of 2004 or 2005; two, had a specific intent to participate in the period actually missed; the circumstance that thwarted the intended participation was (a) unavoidable, (b) unique to him, and (c) unforeseen and unforeseeable, and; he took all reasonable steps to overcome the problem.

If the answer to Questions 1, 2, and 3 is "no," I must uphold the IAD and conclude that Appellant does not qualify for a permit under the unavoidable circumstances rule.

FINDINGS OF FACT

1. Appellant did not timely submit to ADF&G his Saltwater Charter Logbooks that contained the information required by law in 2004 and 2005.²¹
2. In 2008, Appellant's vessel experienced a failure in its heat exchangers.²²
3. In 2008, Appellant was unable to provide many charter halibut fishing trips in waters far from the location of his vessel; instead Appellant provided salmon fishing trips.²³
4. In 2008, Appellant timely submitted to ADF&G the requisite information in a Saltwater Charter Logbook recording two halibut logbook fishing trips.²⁴
5. It took three attempts for the heat exchanger seller to provide the correct heat exchangers to Appellant.²⁵
6. After the seller provided the correct heat exchangers, at the end of the 2008 fishing season, Appellant had the heat exchangers fixed.²⁶

²¹ Original File, IAD, 1st to 8th Page; Original File, Print Summary, 14th Page; Original File, Notice of Opportunity to Submit Evidence, 11th to 13th Page.

²² Pleadings, Memorandum dated September 14, 2010, 39th Page.

²³ Pleadings, Memorandum dated September 14, 2010, 39th Page.

²⁴ Original File, IAD; Original File, Print Summary, 14th Page.

²⁵ Pleadings, Memorandum dated September 14, 2010, 39th Page.

²⁶ Pleadings, Memorandum dated September 14, 2010, 39th Page.