

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

In re Application of

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Appellant

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Appeal No. 11-0002

ORDER DENYING MOTION
FOR RECONSIDERATION

On October 3, 2011, the National Appeals Office (NAO), a division within the National Marine Fisheries Service (NMFS), issued a Decision in this appeal. NAO received Appellant's Motion for Reconsideration dated October 12, 2011. Appellant's Motion was filed timely.

Pursuant to NAO's policy, a Motion for Reconsideration must state material issues of law or fact that the appellant believes the Administrative Judge misunderstood or overlooked and must contain an argument, or points and authorities, in support thereof.¹ I have carefully reviewed the Decision in this case and Appellant's Motion. I conclude the Decision does not contain material errors of law or fact. Accordingly, I deny Appellant's Motion.

Appellant argues in his Motion that NAO incorrectly interpreted and applied the definitions of "bottomfish logbook fishing trip" and "logbook fishing trip". The 2004 and 2005 logbook instructions explained how to report bottomfish fishing trips where halibut were the target. Appellant failed to comply with those instructions, and was accordingly denied a CHP. RAM's interpretation of the terms "bottomfish logbook fishing trip" and "logbook fishing trip" is reasonable and is not a basis to overturn the IAD.

Appellant also argues in his Motion that the logbook reporting instructions for 2004 and 2005 were internally inconsistent and confusing. As explained in the Decision, before NMFS adopted the CHLAP regulations, it considered the issue of bottomfish reporting. After reviewing comments received on the Proposed Rule, NMFS stated: "If a business owner did not comply with specified reporting requirements, then the fishing trip will not be counted as...a bottomfish logbook fishing trip during the qualifying period."^{2, 3}

Appellant also argues in his Motion that NAO interpreted the CHP regulations as requiring error-free logbook reporting. There is no requirement that logbook reporting be error-free, nor is there any indication in the Decision stating an applicant must submit his logbooks without error. What is required, however, is that an applicant timely and properly report to ADF&G his bottomfish logbook vessel trips for the qualifying period,

¹ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>.

² Final Rule, 75 Fed. Reg. 554, 592 (Jan. 5, 2010).

³ Decision issued, page 6.

which is what Appellant failed to do. As stated in the Decision, the applicable Saltwater Charter Vessel Logbooks contained written instructions requiring individuals to record all bottomfish trips, including those in which halibut was the target.⁴

Appellant also argues in his Motion that by determining Appellant did not demonstrate the Official Record was incorrect, NAO rendered the regulations at 50 C.F.R § 300.67(h)(3)-(4) meaningless. It is not logical to conclude that just because Appellant failed to prove the Official Record was incorrect in his case that the above-referenced regulations are meaningless.

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Appellant did not meet the minimum participation requirements for the qualifying period (2004 or 2005).

The new effective date of the Decision is December 30, 2011, subject to the Regional Administrator's review.⁵



Steven Goodman
Administrative Judge

Date Issued: November 30, 2011

⁴ Decision issued, page 6.

⁵ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).