

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. 10-0007

ORDER DENYING MOTION  
for RECONSIDERATION

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On November 23, 2011, the undersigned issued the Decision in this appeal. On December 5, 2011, Appellant timely filed a Motion for Reconsideration (Motion).

A motion for reconsideration is not a new layer of appeal or an opportunity to present arguments or evidence that were available prior to the date the record closed. A motion for reconsideration must state material issues of law or fact the appellant believes were misunderstood or overlooked in the decision. In support of a motion for reconsideration, an appellant must include arguments, or points and authorities in support thereof.<sup>1</sup>

Appellant states in his Motion I erred in finding Appellant did not meet the minimum participation requirements in 2008. Appellant asserts I misunderstood the facts surrounding his new vessel's operation in 2008. Appellant claims that although he had clients booked for fishing trips, he did not know when he would receive delivery of his boat. Appellant explains delivery of the vessel took longer than usual due to the remoteness of Appellant's location. Moreover, once the new vessel was delivered, Appellant had to ensure the vessel was seaworthy and safe. Appellant also indicates that once the vessel was ready there was only one month remaining in the fishing season. Appellant decided not to fish for that last month because he believed it would not have been cost effective to do so. In addition, Appellant did not know he needed to report halibut to the State of Alaska Department of Fish and Game (ADF&G) because he believed halibut is a Federal fish.

Appellant's Motion does not show the Decision included an error of law or fact.

Appellant indicates in his Motion he decided fishing for a month was not cost effective. In other words, he could have operated a charter halibut fishing business for a month, but chose not to do so. If someone specifically intends to charter fish and has an opportunity to do so but declines, that is strong evidence he does not have the specific intent to operate a charter fishing operation.

Appellant also argues in his Motion leasing a boat was a difficult task requiring more effort than renting a car and that available boats for lease are limited. For the sake of argument, I will assume Appellant's recitation of the leasing environment is accurate;

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

however, this does not explain why Appellant did not take or did not report the one additional logbook trip needed to meet the minimum requirements. To be clear, Appellant had a charter vessel available mid-August and used it to take groups charter fishing rather than operate additional halibut logbook trips.

Lastly, for the first time in this appeal, Appellant states he did not report all his trips because he thought halibut was a Federal fish. This argument should have been raised on appeal and for that reason, I will not entertain it at this stage of the proceeding. I note, though, that Appellant previously stated he did not report the trips he took in 2008 because he had not charged for them. The new argument about "Federal fish" appears to contradict Appellant's previously stated reason for not reporting certain charter trips taken in 2008. Further, even if I were to entertain Appellant's argument about not reporting Federal fish, that would not result in an outcome favorable to Appellant because Appellant's misunderstanding would not excuse him from complying with applicable law.

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. The circumstances surrounding the break-down of Appellant's first vessel and his subsequent purchase of a new one did not thwart Appellant's ability to operate a charter halibut business in 2008. Appellant in this case made a conscious decision to not operate his charter fishing business in 2008, and did not have the specific intent to operate a charter fishing business in 2008.

I have carefully reviewed the November 23, 2011, Decision and conclude Appellant's Motion does not show a material error of law or fact. Therefore, Appellant's motion is denied.

However, I am vacating the Decision dated November 23, 2011 due to statements suggesting trips provided free-of-charge could or should have been reported to ADF&G. While not material errors, the statements nevertheless appear inaccurate since the 2008 logbook instructions indicate trips provided free-of-charge should not be reported to ADF&G. To be clear, trips provided for exchange-of-value are not provided free-of-charge and for that reason I see no reason they should not have been reported to ADF&G.

Since the original Decision is vacated, I am issuing a Decision on Reconsideration with this Order.



Eileen G. Jones  
Chief Administrative Judge

Date Issued: April 3, 2012