

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

In re Application of



Appellant

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Appeal No. 11-0077

ORDER DENYING MOTION for
RECONSIDERATION

On March 7, 2012, the undersigned issued the Decision in this appeal. On March 19, 2012, 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 was 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.¹

In his Motion, Appellant states he asked for a hearing to prove his unavoidable circumstances claim. Appellant submitted an affidavit “to provide more clarity to his claim of the unavoidable circumstances that prevented him from catching the balance of the 10 metric tons.”

As stated in the Decision, unavoidable circumstances is not recognized under the License Limitation Program (LLP): “Appellant’s attorney...states if Appellant did not meet the requirements it was due to unavoidable circumstances. The LLP regulations do not include an unavoidable circumstances provision as a basis for an applicant to receive an endorsement.”²

Also in his Motion, Appellant argues he caught almost half of the requisite amount to be eligible for an endorsement. As addressed in the original Decision:

According to the official record, Appellant harvested 4.497 metric tons of Pacific cod between January 1, 2002 and December 8, 2008. The 2,037 pounds of Pacific cod Appellant landed was by-catch during the Pacific halibut IFQ fishery; this was not landed in a Federal directed fishery for Pacific cod but during the Pacific halibut IFQ fishery and therefore not recognized in the regulations as landings data to establish the minimal ten mt.³ Since what is recognized as creditable for an endorsement, 4.497

¹ <http://www.nmfs.noaa.gov/mb/appeals/mb7.htm>

² Decision dated March 7, 2012, page 5.

³ 50 C.F.R. § 679.4(k)(10)(ii).

mt., is less than the required 10 mt., Appellant is not eligible for an endorsement.⁴

Appellant's Motion has not shown a material error of law or fact in the Decision. Accordingly, NAO's Decision with a new effective date of June 8, 2012 is the final agency action unless the Regional Administrator revises, reverses, or modifies the Decision.



Eileen G. Jones
Chief Administrative Judge

Date Issued: May 9, 2012

⁴ Decision dated March 7, 2012, page 4.