

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

In re Application of)
) Appeal No. 11-0080
)
)
) ORDER DENYING MOTION for
) RECONSIDERATION
Appellant)

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

As described in the original Decision, Appellant's claim for an endorsement was late:

The regulations governing the LLP [License Limitation Program] require applicants to respond to the Notice within a thirty-day window.² On April 27, 2011, RAM sent Appellant his Notice for filing a claim. In the Notice, RAM informed Appellant he could submit evidence by May 27, 2011. Appellant concedes his office personnel did receive the Notice timely. Thus, Appellant was on notice that he had received the Notice. Moreover, the applicable regulations do not provide an exception or equitable authority for NAO to waive the LLP regulations. In pertinent part the regulations provide: "Additional information or evidence received after the 30-day evidentiary period specified in the letter [Notice]...will not be considered..."³ I conclude Appellant's claim was not filed in a timely manner and RAM correctly followed its regulations and properly denied Appellant's claim for an endorsement.⁴

In his Motion, Appellant does not argue how I erred in concluding that his claim was late and on that basis upholding the Initial Administrative Determination (IAD).

Rather, in the Motion, Appellant raises five arguments. First, Appellant claims his permit could not be changed to Catcher/Processor and Catcher Vessel. Second,

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

² 50 C.F.R. §300.67(h)(1); 75 Fed. Reg. 1595 (January 12, 2010).

³ 50 C.F.R. § 679.4(k)(10)(v)(2)(E).

⁴ Decision dated March 7, 2012, page 4.

during the qualifying years, Appellant's business legally functioned as a Catcher Vessel, even though his permit was designated as Catcher/Processor. Third, Appellant's permit had a notation indicating his varied fishing operation. Fourth, the new LLP regulations are unreasonable because they force vessels into specific categories. Fifth, NOAA did not consider evidence that Appellant functioned as a Catcher Vessel.

I decline to entertain the five arguments on the merits. As stated, Appellant's claim was not timely.

In reaching my conclusion, I understand Appellant would like the agency to consider his landings as a Catcher Vessel, that his business may have functioned as a Catcher Vessel, and that he feels he could not change the designation on his permit. However, the new LLP regulations direct the agency to look at a permit holder's eligibility for an endorsement based on the vessel-designation on a business's permit. I cannot deviate from the rules the agency has promulgated. Accordingly, Appellant's Motion does not show the Decision included an error of law or fact.

The new effective date of the Decision is June 8, 2012. NAO's Decision is the final agency of the agency unless the Regional Administrator revises, reverses, or modifies the Decision.



Eileen G. Jones
Chief Administrative Judge

Date Issued: May 9, 2012