

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. 12-0003

ORDER DENYING MOTION
FOR RECONSIDERATION

On April 11, 2012, the National Appeals Office (NAO), a division within the National Marine Fisheries Service (NMFS), issued a Decision in this appeal. On April 23, 2012, NAO received Appellant's Motion for Reconsideration and request for an extension to file a supplemental Motion for Reconsideration (Motion). On April 24, 2012, NAO issued an Order granting Appellant an extension of time to file a supplemental Motion by May 8, 2012. On May 3, 2012, NAO received Appellant's supplemental Motion.

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 makes the following arguments in his Motion: 1) the Council afforded special processing rights to Appellant; 2) the Council's intent is part of the law and should not be limited by time deadlines; 3) the Council's intent should supersede administrative rules; 4) Because the Bering Sea Aleutian Islands Crab Rationalization Program (CRP)² rules were based on the Council's rulings, the CRP rules should address all of the Council's rulings; 5) the appeal is a matter of the Council's intent, not an equitable argument for allocation; 6) CRP deadlines should be stayed by the federal bankruptcy process; and, 7) that taking and/or not recognizing an asset of the bankruptcy estate would require bankruptcy court approval.

Although in June 2002, the North Pacific Fishery Management Council (Council) approved a motion apparently meant to benefit Appellant, there are no provisions in the CRP regulations exempting Appellant from a requirement to timely file an appeal. Appellant argues the Council's intent is the law, but this is incorrect. NAO will give effect to the CRP regulations, but the Council's rulings are not law. The scope of the appeal process does not extend to evaluating whether the CRP regulations follow the Council's intent, or whether the Council's intent was to provide Appellant with an exemption to timely filing an appeal. NAO cannot change or add to regulatory

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

² Final Rule, 70 Fed. Reg. 10,174 (Mar. 2, 2005).

provisions. Appellant argues the Council's intent should supersede administrative rules, but there is no basis to support such a contention. Even if I were to accept such a contention as true, there is no evidence to support the Council intended to provide Appellant with an exemption to the requirement of timely filing an appeal. The June 2002 Council motion referenced above does not contain any information indicating Appellant is exempt from the requirement to file an appeal timely.

Appellant also argues because the CRP rules were based on the Council's rulings, the CRP rules should address all of the Council's rulings. The scope of the appeal process does not extend to evaluating the validity of the CRP regulations or whether these regulations address the Council's rulings. Appellant also argues the appeal is a matter of the Council's intent, not an equitable argument for allocation. In an appeal, NAO decides whether the CRP regulations were correctly applied in Appellant's case. As noted above, there are no provisions in the CRP regulations exempting Appellant from a requirement to timely file an appeal.

Appellant argues the federal bankruptcy process should stay all matters and deadlines, including the CRP deadlines for filing an appeal. Appellant's Motion, however, does not contain any legal support for this argument. Generally, bankruptcy proceedings may cause a stay of an administrative proceeding; however, that type of stay does not equate to tolling a regulatory deadline to file an administrative appeal. Finally, Appellant argues that taking and/or not recognizing an asset of the bankruptcy estate would require bankruptcy court approval. It is Appellant who has filed an appeal with NAO. The scope of the appeal process does not extend to evaluating whether a CRP permit application appeal is a bankruptcy estate "asset" or whether not providing him with a decision in his favor is a "taking" from such an estate.

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Applicant has not complied with the procedural requirements for perfecting an appeal with NAO.

The new effective date of the Decision is June 13, 2012 subject to the Regional Administrator's review.³

Steven Goodman
Administrative Judge

Date Issued: May 14, 2012

³ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).