



case decided to uphold the initial administrative determination.<sup>3</sup> In an email dated April 5, 2011, NAO explained that any hearings must be held and the record must be closed before a decision can be prepared. In the same email, NAO again offered Appellant the option of requesting a hearing. If NAO did not receive such a request by April 15, 2011, it would close the record and prepare the decision. Appellant did not request a hearing or submit additional information. NAO closed the record and prepared a decision, pursuant to the procedural regulations governing this appeal: "The appellate officer will close the record and issue a decision after determining there is sufficient information to render a decision on the record....The decision must be based solely on the record of the proceedings."<sup>4</sup>

In his appeal, Appellant relied on documentation already submitted to Restricted Access Management.<sup>5</sup> In Appellant's letter accompanying his application for a Charter Halibut Permit, Appellant stated that he sold Vessel in March 2008. Despite taking trips to Washington and California, Appellant "did not seal a deal on a new vessel . . . until September of 2008." Prior to issuance of the Decision, Appellant did not submit to NAO information about a specific vessel in California that Appellant considered purchasing in May 2008. Prior to issuance of the Decision, Appellant also did not submit evidence showing that Appellant's decision not to purchase this vessel was due to discovery of mechanical and structural issues. Because that evidence was not in the record when it closed, it was not used in reaching the Decision, and it will not be considered now since the record is closed and reconsideration is not another layer of appeal. The reconsideration process is not an opportunity to add evidence to one's case after one receives an unfavorable decision.<sup>6</sup> Rather, based on the evidence of record and the Decision, the reconsideration process is designed to correct errors of law or fact made in a Decision.

As indicated in the Decision, Appellant voluntarily sold his Vessel, because he wanted to upgrade. Appellant chose to upgrade and chose to sell his Vessel before obtaining a replacement. Appellant's decision to sell his Vessel without a replacement readily available caused him to not be able to operate in the 2008 fishing season. Similarly, the record does not show by a preponderance of the evidence that Appellant took all reasonable, affirmative steps, beyond looking for a new vessel, to operate his business during the 2008 fishing season. Assuming for the sake of argument that the delay in obtaining a new vessel was mechanical problems in the vessel Appellant wanted to purchase, that would not change the absence of evidence in the record showing Appellant's circumstance was of his own making and could be overcome in any number of ways, but were not. The circumstance outlined in Appellant's paperwork in the record was not unavoidable, or unforeseeable or reasonably unforeseeable, and because of that, as analyzed further in the Decision, Appellant cannot prevail on his unavoidable circumstances claim.

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<sup>3</sup> Appeals Correspondence Tab, Email by Appellant to NAO dated April 5, 2011.

<sup>4</sup> See 50 C.F.R. § 679.43(k).

<sup>5</sup> Pleadings Tab, Appellant's Letter of Appeal dated Aug. 7, 2010 (received by RAM on Aug. 30, 2010).

<sup>6</sup> See 50 C.F.R. § 679.43(k); <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>

[REDACTED]  
Appeal No. 10-0042

The new effective date of the Decision is September 12, 2011 subject to the Regional Administrator's review.<sup>7</sup>

[REDACTED]  
Eileen G. Jones/  
Chief Administrative Judge

Date Issued: August 12, 2011

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<sup>7</sup> <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).