

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. 11-0005

ORDER DENYING MOTION for  
RECONSIDERATION

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On November 15, 2011, the National Appeals Office (NAO), a division within the National Marine Fisheries Service (NMFS), issued a Decision in this appeal. On November 18, 2011, NAO received Appellant's Motion for Reconsideration. Appellant's Motion was filed timely.

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.<sup>1</sup> 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 argues in his Motion that he would have been eligible for a Charter Halibut Permit (CHP) if he had known how to correctly report his halibut fishing activity in his logbooks, that he had been "motor mooching" during the qualifying and recent participation periods, and that he did not know at that time his "motor mooching" activity would have helped him qualify for a CHP. Appellant states in his Motion that he was unaware of the definition of "mooching" during the qualifying and recent participation period, and that this term was not defined in the logbooks. Appellant also states in his Motion that he presented evidence in his appeal from two other fishermen who witnessed him "mooching" for fish.

As explained in the Decision, before NMFS adopted the CHLAP regulations, it considered the issue of bottomfish reporting. After reviewing comments received on the Proposed Rule, NMFS stated: "If a business owner did not comply with specified reporting requirements, then the fishing trip will not be counted as...a bottomfish logbook fishing trip during the qualifying period."<sup>2,3</sup> Although Appellant claims he took at least five bottomfish fishing trips in 2004 or 2005, and in 2008, while "mooching" or "motor mooching", he did not properly report those trips to the Alaska Department of Fish and Game (ADF&G) in order to be eligible for CHP. The relevant Saltwater

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

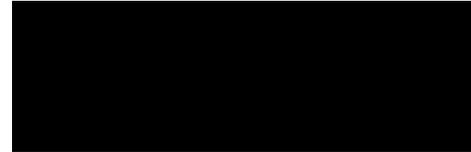
<sup>2</sup> Final Rule, 75 Fed. Reg. 554, 592 (Jan. 5, 2010).

<sup>3</sup> Decision issued, page 7.

Charter Vessel Logbooks provided instructions on how to record bottomfish trips, but Appellant failed to follow those instructions.

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Appellant did not meet the minimum participation requirements for the qualifying period (2004 or 2005) and recent participation period (2008).

The new effective date of the Decision is January 13, 2012 subject to the Regional Administrator's review.<sup>4</sup>



Steven Goodman  
Administrative Judge

Date Issued: December 14, 2011

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<sup>4</sup> <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).