

abandoned the fishery, ██████ stated, “More to the point [leaving Alaska] was to seek qualified medical help for my condition.”⁵

Second, ██████ sought to clarify the statement in his March 24, 2010, letter to RAM, in which he said,

In early 2008, I had a conversation with ██████ and he mentioned that they reconfigured the interior of the ██████. Fine, it’s his boat to me call me silly, some do, but that burst the bubble of a return. At that point I gave up – the straw that broke the camel’s back.

██████ explained this statement by alleging that he made a “specific attempt” to purchase the vessel back from ██████. He stressed that it was important that he purchase the vessel back because of its interior configuration and comfortable ride, both characteristics that he felt were not only necessary for his own comfort, but very desirable for the type of clientele he would serve, namely, “RVers,” those who arrive in Homer in recreational vehicles.

The effective date of the Decision was stayed, pending a ruling on ██████ motion for reconsideration.

The standard for reconsideration of a Decision is whether the administrative judge misstated or overlooked a material fact or issue. A material fact or issue of law is one which affects the outcome of the Decision or, even if the outcome is the same, the fact or issue should be addressed to clearly state the basis for the Decision.

I conclude that ██████ has not shown that the Decision overlooked or misunderstood a material fact or issue of law. I therefore deny reconsideration of the Decision.

ANALYSIS

With respect to ██████ first concern -- that he had “abandoned” the fishery following the end of the 2006 season -- he argues that he did not abandon the fishery; rather, he served as the licensed captain on fifteen trips in 2007.

When the term “fishery” is used in the Decision, it refers to the operation of a charter halibut fishing business under an Alaska Department of Fish and Game (ADF&G) Business Owner license.⁶ After 2006, ██████ never again operated such a business under his own ADF&G Business Owner License. ██████ sold the ██████ to ██████ in 2007. His presence aboard the ██████ in 2007 was solely to make the ██████ operation legal, and he left the vessel when the younger ██████ received his U.S. Coast Guard licensing.

⁵ Letter from ██████ to NOAA (dated Dec. 9, 2010, received Dec. 13, 2010).

⁶ Decision at 3 *citing* 50 C.F.R. § 300.67(b)(1); Decision at 4 – 5 *citing* 50 C.F.R. § 300.67(g)(1)(i) that an applicant under the unavoidable circumstance regulation must show that he had a specific intent to operate a charter halibut fishing business in the recent participation period [2008].”

attempt to distinguish between “health issues” and “seeking medical help” as a reason for leaving Alaska is not persuasive. It is a distinction without a difference. I agree with that the record shows that he left Alaska to seek medical care. But he did not operate a charter halibut fishing business in 2008 and the question is whether, after he left Alaska, he showed that he had a specific intent to operate a charter halibut fishing business in 2008.

states that leaving Alaska should not count against him because there is no requirement that an operator of a charter halibut business live in Alaska all year round. That is correct. But sold the before he left to seek medical treatment and the record does not show that he took any steps at all to operate a charter halibut fishing business in Alaska in 2008.

With respect to alleged “specific attempt” to repurchase the from the , the only apparent evidence of that alleged attempt was the conversation with in the spring of 2008. writes that he had had no contact with between July of 2007 and the conversation in early 2008. And when that conversation was held, found out that the interior of the vessel had been reconfigured, and concluded in sworn testimony to NMFS, “that burst the bubble of my return. At that point I gave up – the straw that broke the camel’s back.”

I also note that and testified at the hearing. They offered no testimony that, when sold the to in 2007, he intended to buy it back and they offered no testimony that, in early 2008, he did try to buy it back.

has not shown that the Decision overlooked any material point when it concluded that had not shown, by a preponderance of evidence in the record, that he attempted to activate a charter halibut fishing business in 2008. In the absence of verifiable evidence of his intentions, claim must fail.

DISPOSITION

For the reasons stated herein, Request for Reconsideration is DENIED.

The Decision entered in this appeal, dated December 2, 2011, will take effect on March 26, 2011, unless by that date the Regional Administrator orders review of the decision.


Philip J. Smith
Administrative Judge