



[S]ince Appellant was able to provide charter fishing trips in 2004 and 2005, I cannot find that he suffered from an unavoidable circumstance that “thwarted” (prevented) him from operating a charter business. Indeed, Appellant was operating a charter operation in 2004 and 2005; in fact, the record shows he completed at least four charter fishing trips in 2004 and five such trips in 2005. Thus, it would be illogical for me to find that Appellant suffered an unavoidable circumstance in 2004 or 2005 that prevented him from chartering.<sup>5</sup>

Further, as stated in the Decision, “I am cognizant of the potential ramifications of Appellant being held ineligible for a permit. I commend Appellant’s service to his country.” However, the Charter Halibut Limited Access Program regulations do not provide me with authority to give equitable relief. Rather, my Decision must be based solely on whether an appellant meets the requirements for a permit as provided for in the regulations governing the Charter Halibut Limited Access Program. As explained in the Decision and reiterated here, Appellant does not meet the regulatory requirements for a permit. In addition, the Procedural Regulations do not allow me to consider new evidence after a decision has been issued. Thus, I deny Appellant’s Motion for Reconsideration.

Because the information Appellant articulates in his Motion was not in the record when it closed, it was not used in reaching the Decision. Further, the information may not be considered now since the record is closed and this evidence was available at the time of the appeal but Appellant chose not to present it. The reconsideration process is not another layer of appeal, nor is it an opportunity for an appellant to add previously available evidence to his case after he 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.

The new effective date of the Decision is December 1, 2011 subject to the Regional Administrator’s review.<sup>7</sup>



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Eileen G. Jones  
Chief Administrative Judge

Date Issued: November 1, 2011

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<sup>5</sup> Decision, Page 6.

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

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