

operator or business is responsible for complying with applicable Federal halibut fishery regulations and ADF&G reporting requirements.³

Appellant implies in his Motion that by not being issued a Charter Halibut Permit he is being punished or penalized for not properly reporting his bottomfishing trips to ADF&G, even though he made a good faith effort to follow the instructions for properly reporting these trips. It is Appellant's burden to show that he properly reported to ADF&G at least five bottomfish fishing trips in a logbook with the requisite information during the 2004 or 2005 qualifying period. As stated in the Decision, I am bound by the CHLAP regulations, and I am unable to provide Appellant relief under the regulations and the facts of this case.⁴

Appellant argues in his Motion that he believed he was going to receive a hearing in his case. Appellant had multiple opportunities to submit evidence in support of his appeal. On January 10, 2011, Appellant's appeal was received.⁵ On March 3, 2011, NAO sent Appellant a letter notifying him that the office had received his appeal and requesting that any additional documentation or information in support of his appeal be submitted to NAO by April 4, 2011.⁶ Appellant submitted additional documents and evidence that were added to the case record. As noted in the Decision, because Appellant's record contained sufficient information on which to reach final judgment, a hearing was not needed in his case.⁷ Further, a hearing may only be ordered if Appellant demonstrated a genuine and substantial issue of adjudicative fact for resolution.⁸ Appellant did not articulate a material issue of fact, which if he proved, would help him prevail in his appeal. Although Appellant did raise legal and policy issues in his appeal, a hearing may not be ordered on issues of policy or law.⁹

Appellant presented evidence in his Motion that he has a learning disability affecting his ability to read and write, that this condition contributed to his inability to properly record and report his bottomfishing activity to ADF&G during the qualifying period (2004 or 2005), and that he did not present this evidence on appeal because it is of a personal and private nature. Because this evidence was not in the record when it closed, it was not used in reaching the Decision. Further, this evidence 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.¹⁰ 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.

³ Final Rule, 75 Fed. Reg. 554, 592 (January 5, 2010).

⁴ Decision issued, page 7.

⁵ Pleadings File Tab, appeal letter, dated January 9, 2011, received January 10, 2011.

⁶ Appeals Correspondence Tab, Letter from NAO to Appellant dated March 3, 2011.

⁷ Decision issued, page 2.

⁸ 50 C.F.R. § 679.43(g)(3)(i).

⁹ 50 C.F.R. § 679.43(g)(3)(i).

¹⁰ See 50 C.F.R. § 679.43(k); <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>.

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).

The new effective date of the Decision is December 1, 2011 subject to the Regional Administrator's review.¹¹

[REDACTED]

—
Steven Goodman
Administrative Judge

Date Issued: November 1, 2011

¹¹ <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).