

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of



)
) Appeal No. 11-0013
)
) ORDER DENYING MOTION
) FOR RECONSIDERATION
)

On October 31, 2011, the National Appeals Office (NAO), a division within the National Marine Fisheries Service (NMFS), issued a Decision in this appeal. On November 4, 2011, NAO received an email message from Appellant which I construe as a 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.¹ 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 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 20, 2011, Appellant's appeal was received.² On April 21, 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 May 23, 2011.³ 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.⁴ Further, a hearing may only be ordered if Appellant demonstrated a genuine and substantial issue of adjudicative fact for resolution.⁵ Appellant did not articulate a material issue of fact, which if he proved, would help him prevail in his appeal. Appellant's arguments on appeal concerned legal definitions, his dispute of the Official Record, and his problems regarding acquiring Charter Halibut Permit qualification information. Although these arguments raise legal and policy issues, a hearing may not be ordered on issues of policy or law.⁶

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

² Pleadings Tab, type-written letter of appeal, dated January 17, 2011, received January 20, 2011

³ Appeals Correspondence Tab, Letter from NAO to Appellant dated April 21, 2011.

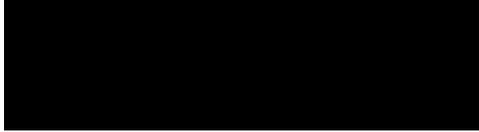
⁴ Decision issued, page 2.

⁵ 50 C.F.R. § 679.43(g)(3)(i).

⁶ 50 C.F.R. § 679.43(g)(3)(i).

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Appellant did not prove by a preponderance of the evidence that he reported at least five bottomfish logbook fishing trips during either 2004 or 2005. Appellant has not established by a preponderance of the evidence that he is a successor-in-interest under the CHLAP regulations.

The new effective date of the Decision is December 30, 2011 subject to the Regional Administrator's review.⁷



Steven Goodman
Administrative Judge

Date Issued: November 30, 2011

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