

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

In re Application of

[REDACTED]

Appellant

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Appeal No. 10-0123

ORDER DENYING MOTION for  
RECONSIDERATION

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On July 29, 2011, the undersigned issued the Decision in this appeal. On August 8, 2011, NAO received Appellant's request for Extension of Time to File a Motion for Reconsideration. Appellant's request was granted on August 9, 2011 and Appellant was allowed to submit a Motion for Reconsideration by August 31, 2011. On August 31, 2011, Appellant timely submitted his Motion for Reconsideration.

The National Appeals Office (NAO) policy provides that a motion for reconsideration must state material matters 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> In his Motion for Reconsideration, Appellant states that in the Decision I erred in finding that Appellant only reported two bottomfish logbook fishing trips in 2004 and no such trips in 2005.

In Appellant's motion, he asserts the instructions provided in the State of Alaska Department of Fish and Game (ADF&G) 2004 logbook were ambiguous and confusing. However, based on those instructions Appellant was able to adequately report two bottomfish logbook fishing trips in 2004. Further, applicable regulations at 50 C.F.R. § 300.67 do not provide support for the proposition that failure to understand logbook instructions is a basis for excusing meeting the participation requirements as evidenced by logbook trips.

Appellant also takes issue with 50 C.F.R. § 300.67(f)(2). Appellant states in his motion, "50 C.F.R. §§ 300.67 (f)(s) [sic] does not specifically require a qualifying 'bottomfish fishing logbook trip' to comply in strict compliance with the ADF&G instructions, but only that at least one of the three pieces of information be 'reported.'" Appellant is accurate that 50 C.F.R. § 300.67(f)(2) provides that to receive credit as a "bottomfish logbook fishing trip" applicants must note one of the following pieces of information: The statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.<sup>2</sup> Based on the record before me, Appellant made numerous logbook entries

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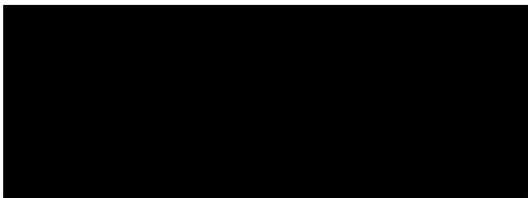
<sup>1</sup> <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>

<sup>2</sup> See 50 C.F.R. § 300.67(f)(2).

which only indicated “butts.” Appellant did not notate the statistical area where bottomfishing occurred, the boat hours the vessel was used for bottomfishing, or the number of rods used on the vessel for bottomfish fishing to establish he took at least five halibut fishing trips in 2004. Nothing in the charter halibut program regulations authorizes me to deviate from the reporting requirements. In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. The findings Appellant challenges, based on the Official Record, are supported by evidence of record, and Appellant has not proven otherwise. Appellant has also not convinced me that I am authorized to deviate from the requirements outlined in the charter halibut program regulations.

Lastly, Appellant argues in his motion for reconsideration that he was denied due process and denying him a permit constitutes an unconstitutional taking. Appellant in this case was given due process. As outlined in the Decision, under Statement of the Case, Appellant has been given notice and multiple opportunities to present evidence in support of his case. Further, NAO independently reviewed the evidence Appellant presented. Moreover, contrary to Appellant’s assertion, this appeal does not involve a takings issue within the meaning of the U.S. Constitution since Appellant has not received a license nor has the government taken property from him.

For the foregoing reasons, I deny Appellant’s Motion for Reconsideration. The new effective date of the Decision is November 14, 2011 subject to the Regional Administrator’s review.<sup>3</sup>



Eileen G. Jones  
Chief Administrative Judge

Date Issued: October 13, 2011

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<sup>3</sup> <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>; 50 C.F.R. § 679.43(o).