

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

In re Application of

[REDACTED]

Appellant

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Appeal No. 11-0014

ORDER DENYING MOTION for
RECONSIDERATION

On November 23, 2011, the National Appeals Office (NAO), a division within the National Marine Fisheries Service (NMFS), issued a Decision in this appeal. On December 4, 2011, NAO received Appellant's timely Motion for Reconsideration (Motion). In response to a request by Appellant, NAO granted Appellant additional time until January 3, 2012 to submit additional evidence in support of his Motion. NAO did not receive any additional evidence from Appellant subsequent to December 4, 2011.

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 because of his medical disability he was unable to meet the criteria necessary to qualify for a charter halibut permit (CHP). Appellant did not qualify for a CHP because he did not properly and timely report his 2004 and 2005 bottomfishing activity to ADF&G. As stated in the Decision, Appellant credibly established that his injuries affected his charter vessel business, however he nonetheless operated his charter vessel business during the qualifying and recent participation periods, fishing for halibut approximately twenty-two times in 2005, and nine times in 2008.² Based on these facts, it is not reasonable to conclude Appellant's specific intent to operate a charter halibut business in 2004 or 2005 was thwarted by his physical injuries.

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Appellant does not qualify under the unavoidable circumstance provisions of the CHLAP regulations to receive a CHP. Appellant has not proven all of the necessary elements to prevail in an unavoidable circumstance claim pursuant to 50 C.F.R. § 300.67(g)(1)(i)-(iv).

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

² Decision page 6.

The new effective date of the Decision is March 12, 2012 subject to the Regional Administrator's review.³

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Steven Goodman
Administrative Judge

Date Issued: February 10, 2012

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