

Judge Parlen McKenna grants motion of recusal, removing himself from further involvement in Yacubian case

BOSTON (Saving Seafood) July 28, 2011 -- Judge Parlen McKenna has granted a motion for recusal in the case of former New Bedford Scallop Larry Yacubian. Saving Seafood first reported on July 8, that two Coast Guard administrative law judges were been reassigned to adjudicate additional legal requests in controversial NOAA enforcement cases. The cases, involving former New Bedford scalloper Larry Yacubian and the Gloucester Seafood Display Auction, were among the cases in which [an independent special master found](#) the defendants' rights so severely trampled that they received apologies for the wrongdoing from Secretary Gary Locke and NOAA administrator Jane Lubchenco as well as reimbursement of the judge's imposed fines.

In a [May 17, 2011 decision memorandum](#), Secretary Locke "directed NOAA to terminate the Coast Guard Administrative Law Judge contract" for adjudication of fisheries cases. On July 11, after learning that the same judges who were criticized by the special master had been re-assigned to the Yacubian and Gloucester Auction cases, Congressmen Barney Frank and John Tierney [asked Secretary Locke to make it his "highest priority to arrange for an alternative adjudication forum"](#).

In his order, Judge McKenna wrote:

"Appearance of bias is the incorrect standard to use in disqualification of an administrative law judge because administrative law judges work for the agency whose action they review and an "appearance of impropriety" standard would require recusal in every case. ... No justifiable basis exists for Applicants and their counsel to claim actual bias or prejudgment in this case despite their efforts to raise issues that have nothing to do with resolving Applicants' EAJA claim.

Nevertheless, in order to ensure that Applicants receive consideration of their EAJA claim without unnecessary distractions and to uphold the integrity of the United States Coast Guard's Administrative Law Judge Program from further baseless attacks, I will recuse myself from these proceedings.

ORDER

WHEREFORE: IT IS HEREBY ORDERED that Applicants' Motion for Recusal is GRANTED and I will have no further involvement in considering or ruling upon Applicants' EAJA claim.

Done and dated this 29th day of July, 2011 at Alameda, CA.

HON. PARLEN L. MCKENNA

Administrative Law Judge United States Coast Guard"

The order will be posted to Saving Seafood later this evening.