

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

RE: VIEIRA, ANTONIO M.

AAD No. 00-014/MSA

AMENDED DECISION AND ORDER

Mr. Viera appeared on this date, December 31, 2002, *pro se*, and requested that the hearing be reopened to afford him an opportunity to present additional evidence to the hearing officer concerning hardship. Deborah George, Esq. was contacted by AAD and represented the Office of Management Services. The original hearing was held on October 12, 2000 to consider the denial of a renewal of his commercial fishing license by the Office of Management Services. Because of the time sensitive nature of the matter, the reopened hearing was held this morning with the concurrence of the parties. The hearing was held pursuant to the Administrative Procedures Act, R. I. Gen. Laws §42-35-1 et seq. and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters and was for the limited purpose of taking additional evidence relating to the issue of hardship.

Mr. Viera testified, under oath, that the moratorium did constitute a hardship for him regardless of the fact that he maintained a Massachusetts license. He testified that he used the monies obtained under his Rhode Island license to supplement his income, support his sons and to pay taxes. He testified that it is more expensive for him to fish in Massachusetts and that any money he earned under the Massachusetts license did not compensate for the monies lost as a result of the moratorium. Mr. Viera stated that fishing in Massachusetts is more restrictive than in previous years and it is more time consuming and costly for him to fish there. According to the Applicant, Massachusetts has placed

weekend restrictions on fishing that makes it impossible for him to supplement his income with that license.

During the initial appeal period Mr. Viera was responsible for the care of his mother who had suffered a heart attack. His appeal was filed after August 15, 2000. Consistent with his original testimony, Mr. Viera again testified that the late filing was due to the fact that he was caring for his mother and that he filed it as soon as he was able, approximately two weeks after the deadline. I found Mr. Viera to be a sincere and credible witness on each of the occasions on which he testified.

No witnesses testified on behalf of the Office of Management Services.

FINDINGS OF FACT

After consideration of the testimony and documentary evidence submitted at the hearings I find as fact the following:

1. Antonio Vieira owns a boat that he uses for fishing purposes.
2. Applicant did possess a valid Rhode Island commercial fishing license prior to July 1, 2000.
3. Applicant applied for renewal of the license after August 15, 2000.
4. Applicant failed to apply timely as he was solely responsible for the care of his sick mother during that period of time.
5. Applicant has fished in Massachusetts waters with a valid Massachusetts commercial fishing license for many years.
6. Fishing under the Massachusetts license does not compensate for the loss of income earned under the Rhode Island license.
7. Commercial fishing supplements Applicant's income.
8. Applicant uses the money derived from commercial fishing to pay taxes, to pay the mortgage on his home, and to provide for his sons.
9. Not being able to fish in Rhode Island is a hardship on Applicant.

CONCLUSIONS OF LAW

Based on the evidence of record and consideration of the pertinent statutes and regulations I conclude the following as a matter of law:

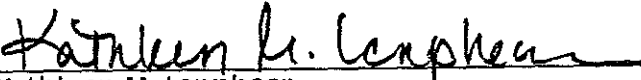
1. Applicant possessed a valid Rhode Island Commercial Fishing License prior to July 1, 2000.
2. The Applicant proved by a preponderance of the evidence that the one year moratorium is a hardship.
3. The failure to apply on or before August 15, 2000 was due to circumstances beyond Applicant's control.

Based on the foregoing it is hereby

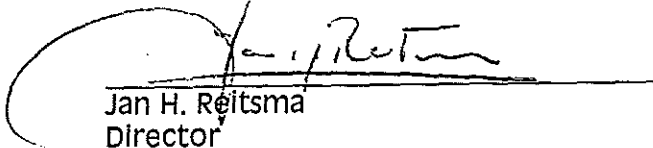
ORDERED

1. The appeal of Antonio Vieira for renewal of a commercial fishing license is **GRANTED**.
2. The Office of Boat Registration and Licensing shall issue a multi-purpose license to the Applicant forthwith upon the presentation of proper payment.

Entered as a Recommended Decision and Order this 31st day of December 2002.


Kathleen M. Lanphear
Chief Hearing Officer
Administration Adjudication Division
235 Promenade Street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Order this 31st day of December, 2002.

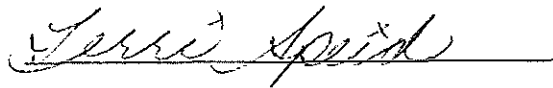

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

RE: VIEIRA, ANTONIO M.
Page 4

AAD No. 00-014/MSA

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Antonio M. Vieira, 255 California Avenue, Providence, RI 02905; and via interoffice mail to: Deborah George, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this 31st day of December 2002.

A handwritten signature in cursive script, reading "Terri Spind", is written over a horizontal line.