

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

RE: ALAN C. EAGLES & ACE LOBSTER COMPANY AAD No. 01-002/F&WA

**DECISION AND ORDER ON CROSS
MOTIONS FOR SUMMARY JUDGMENT**

This matter came before Hearing Officer Mary F. McMahon for consideration of cross motions for summary judgment filed by the Applicant on October 29, 2001 and by the Division of Fish and Wildlife (“Division”) on December 3, 2001. Although this matter involves a lobster trap tag application for the year 2001, the parties had achieved a short-term solution to Applicant’s lobster trap tag problem at, or soon after, the prehearing conference held on May 25, 2001¹. As a result of the accommodation on the tags, Applicant had waived his right to a hearing within ninety (90) days of filing his hearing request and the parties had agreed that this matter could be decided through a summary judgment ruling. Oral argument on the motions was heard on January 8, 2002.

Although Applicant has received Rhode Island trap tags for the year 2001, the parties maintained that the underlying issue still needed to be addressed. In my review of DEM’s website to determine which regulations were in effect in Spring 2001 (amendments to the Rhode Island Marine Fisheries Council Regulations filed with the Secretary of State’s Office on June 22, 2000 established the state’s lobster trap tag program), I have noted that further amendments were effective May 1, 2002. The summary of the changes, as identified on the website, was to clarify the language for the lobster trap tag program “to achieve intent of ASMFC’s Lobster

¹ The *Deposition of Thomas E. Angell* indicates that Applicant was issued 880 State trap tags with the use of a different vessel registration that did not have a federal permit. at 40-41, 44, 61-62.

FMP". Notwithstanding those amendments (which I have purposely not reviewed so as not to influence this decision), neither party has indicated that a summary judgment ruling is no longer necessary and so I am proceeding with this decision.

At the prehearing conference, the parties had agreed to the following stipulations of fact (See Prehearing Conference Record and Order, entered 6/6/01):

1. That the Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Appellant.
2. Alan Eagles holds a commercial fishing license from the State of Rhode Island.
3. The F/V Catherine Ann, which is owned by Alan Eagles, holds a Federal license, allowing it to fish for lobster in Federal waters.
4. In the year 2001, Mr. Eagles applied for 880 trap tags under his commercial license issued by the State of Rhode Island. He also, on behalf of his vessel, applied to NMFS for 1,980 trap tags. These requests were denied in a letter dated April 16, 2001, from John Stolgitis.

Section 8.00 of the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules") provides that parties in contested matters before the AAD may make such motions which are permitted under the AAD Rules and under the Superior Court Rules of Civil Procedure ("Court Rules"). Court Rule 56, which governs motions for summary judgment, provides that "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

Having reviewed the pleadings, stipulations, exhibits, and deposition in the light most favorable to each party in considering the opposing motions, I agree that there is no genuine issue of material fact and that this matter involves a conclusion of law. Summary judgment is properly applied where there exists no genuine issue

of material fact. Mulholland Construction Co. v. Lee Pare and Associates, Inc., 541 A.2d 855 (R.I. 1988), Brill v. Citizens Trust Co., 492 A.2d 1215 (R.I. 1985).

The dispute in this matter arises out of the adoption of new regulations by the Rhode Island Marine Fisheries Council ("RIMFC") and by the National Marine Fisheries Service ("NMFS") regarding the number of lobster traps that may be fished by license holders. As explained by Applicant in his summary judgment motion, the RIMFC had adopted regulation 15.12.3, limiting the number of traps that a licensed person could use in state waters. On June 1, 1999, the limit in effect was 1,200 traps. One year later the limit was reduced to 1,000 traps. On June 1, 2001, the limit was further reduced to 800 traps. The limitation applied to traps set in waters within the jurisdiction of the State of Rhode Island, generally those waters within three (3) miles of the coast.

Waters outside of three miles from the coast are considered Federal waters and have been designated as part of the Exclusive Economic Zone ("EEZ") by the Federal government. According to Applicant's motion and supporting Exhibits A, C and E (Exhibit A is a map depicting the American lobster Management Areas; Exhibits C and E set forth portions of the NMFS American Lobster Fishery Regulations), in December 1999, the NMFS adopted new lobster fishery regulations ("NMFS Regulations"). Those regulations, *inter alia*, divided the EEZ into Nearshore and Offshore Management Areas (also referred to in the NMFS Regulations as lobster management areas); required owners of vessels applying for a limited access American lobster permit for fishing year 2000 and beyond to declare the management areas in which the vessel would fish; and established trap limitations for each management area. Any permitted vessel that had specified more than one EEZ management area was required to abide by the most restrictive

management measures in effect for any one of the specified areas, regardless of the area being fished, for the entire fishing year.

The Nearshore Management Areas were designated Area 1 (state and Federal waters that are near-shore in the Gulf of Maine), Area 2 (state and Federal waters that are near-shore in Southern New England), Area 4 (state and Federal waters that are near-shore in the northern Mid-Atlantic), Area 5 (state and Federal waters that are near-shore in the southern Mid-Atlantic), Area 6 (New York and Connecticut state waters) and the Outer Cape Lobster Management Area (state and Federal waters off Cape Cod).

The only Offshore designation was assigned to Area 3, comprised entirely of Federal waters, generally the waters approximately thirty to forty miles offshore from Rhode Island. The Area 2/3 Overlap received neither an Offshore nor Nearshore designation but is comprised entirely of Federal waters. The NMFS has imposed specific restrictions for fishing lobsters in this area.

Pursuant to these Federal regulations, for the period January 5, 2000 through April 30, 2000 vessels fishing in any area except Offshore Management Area 3 ("Area 3") were limited to no more than 1000 traps. Those vessels fishing only in Area 3, or only in Area 3 and the Area 2/3 Overlap were allowed a maximum of 2000 traps.

Beginning May 1, 2000, vessels specifying any Nearshore Management Area and the Area 2/3 Overlap, or only the Area 2/3 Overlap, were limited to no more than 800 traps. Vessels specifying only Area 3 or only Area 3 and the Area 2/3 Overlap were allowed a maximum of 1800 traps. These limits remained in effect at the time of Applicant's 2001 application.

In order to enforce the fishing year 2000 trap limits as promulgated by both the state and Federal authorities, it was mandated that traps contain trap tags.

Under the Federal program a federally permitted vessel, after declaring the management area(s) to be fished, would then be issued trap tags for the area with the most restrictive limit. If the vessel was fishing in the state waters of Area 2, then it was required to have Federal tags under the Federal program and duplicate state tags for placement in the traps.

In early 2001, the DEM and the NMFS executed a Memorandum of Understanding (referred to in the Rhode Island Marine Fisheries Council Regulations as a "Memorandum of Agreement"; hereinafter referred to as the "MOU/MOA") that allowed, in part, for DEM to issue trap tags for both the Federal permit holders and for state license holders. The document also eliminated the need for duplicate tags when fishing in state waters of Area 2. JT 3 Full at 4.

Applicant subsequently applied for 880 trap tags under his individual state license for fishing on the *F/V Catherine Ann* in state waters and for 1,980 trap tags under the Federal permit issued to the *Catherine Ann*. The DEM Division of Fish and Wildlife, in a letter dated April 16, 2001 ("denial letter"), outright denied Applicant's request for state lobster tags. JT 2 Full at 1.

As for Applicant's request for Federal tags, the denial letter stated that Applicant's declaration of fishing areas in state waters of Area 2 (880 trap tags) and Federal waters of Area 3 (1800 trap tags)² meant that the application and order submission for 1800 Area 3 lobster trap tags must be denied. The letter suggested that if Applicant would amend his declaration from Areas 2 and 3 to only Area 3, then he would be eligible to receive the 1800 trap tags. While the reasoning in the letter was unclear, it stated that the decision to deny issuance of the requested tags was, *inter alia*, based upon the MOU/MOA between the DEM and the NMFS,

² The denial letter apparently referred to the number of tags for Area 2 including the 10% casualty amount (800 + 80) but only the base amount when referencing the tags for Area 3.

several Federal regulations, and section 15.12.3 of the Rhode Island Marine Fisheries Council Regulations (“RIMFC Regulations”). *Id.* at 1-2.

Applicant contends in his Motion that the Division’s decision denying his request for both sets of lobster trap tags for the year 2001 is not supported by the regulations relied upon or by the MOU/MOA.

Applicant has acknowledged that 50 CFR Part 697.4(7)(i-v), cited in the denial letter, provides that a vessel holding a limited access American lobster permit must abide by the most restrictive set of management measures for the areas elected. He recognized that if a vessel with a Federal limited access lobster permit elects both Area 2 and Area 3, it must abide by the more restrictive trap limits of Area 2. This explains the rationale in the denial letter’s suggestion that Applicant elect only Area 3 since he would not be bound by the fewer trap tags of Area 2.

Notwithstanding Applicant’s agreement with the Division’s interpretation of this Federal regulation, Applicant maintains that the two regulatory schemes – Federal and state – do not properly fit together and leave a hole for Applicant to obtain both state trap tags for him as an individual for use in the state waters of Area 2, and Federal ones for his vessel for use in Area 3. He asserted that there is no state regulation differentiating between an Applicant with only the state license and one who held both the state individual license and the Federal permit for his vessel. His conclusion, therefore, was that the Division should ignore the existence of the Federal permit in issuing the state tags and, if there was a potential violation of the Federal regulations as it related to the vessel’s application for Federal tags, then it was up to the NMFS, not the DEM, to take steps against the permit.

He also based his contention that he should obtain both sets of tags on what had occurred in the year 2000. Then, he had applied under his Federal

permit and elected Area 3. He had received 1800 Federal trap tags plus the casualty amount. He had also applied for state trap tags and received, as an individual, 1000 trap tags, plus the casualty amount, for use in Rhode Island waters (Area 2). He claims in the motion and in argument that, in the absence of specific statutory authority or mandate, the Division should not have relied upon Federal regulations to deny Applicant his state tags. He asserts that he had received both sets of tags in 2000 and that the same outcome should have happened in 2001.

Division's counsel explained that prior to the execution of the MOU/MOA in 2001, lobster fishermen operating federally permitted vessels within the state waters of Area 2 did indeed have two sets of tags issued to them. Both were required to be placed in the traps in the state waters; it did not double the amount of traps that they could maintain. If the individual had only the State license, then only the one set of tags was issued and only one tag needed to be placed in the trap. This process and the later changes were best explained in the *Deposition of Thomas E. Angell* provided by Applicant's counsel. Mr. Angell, a Principal Marine Fisheries Biologist in the Division of Fish and Wildlife, is responsible for directing the information regarding the trap tag program.

In 2000, Applicant had apparently only elected Area 3 under his Federal application but had identified state waters of Area 2, and Area 3 in his state application. The inconsistency in the two applications (failing to identify Area 2 to the NMFS) was not caught in 2000 and Applicant received more Federal tags than he was entitled to (since Area 2 had a lesser limit and the most restrictive limit applies). He also received state tags because, as a federally permitted vessel, he would be fishing in state waters of Area 2.

According to the *Deposition of Thomas E. Angell*,

[t]he problem came in Al's application to the State of Rhode Island, which indicated that he was going, declaring to fish in both Area 3 and Area 2, which he did not report to the National Marine Fisheries Service. Given the fact that Mr. Eagles declared to us both Area 3, and even though it's State waters only, it's still lobster management Area 2, I was required because we did not have the memorandum of understanding to supply those tags, which would be placed in traps in conjunction with a federal trap tag, so that they could be fished in State waters. at 29-30.

The RIMFC Regulations in effect in July 2000 support Mr. Angell's interpretation of the requirements as they stood in the year 2000. Section 15.14.1 had required all lobster traps used within the waters under the jurisdiction of the State of Rhode Island to have a state lobster trap tag permanently attached to the trap bridge. Section 15.14.1-1 had referenced an MOU/MOA between the State of Rhode Island and the Northeast Region, National Marine Fisheries Service that required the state to recognize the Federal trap tags as being valid within the waters under the jurisdiction of the state, provided the Federal permit holder also possessed a valid state license for the taking of lobsters.

In early 2001 another MOU/MOA was entered into between the parties that changed this so that only one set of tags was required. In addition, because there was a single application to the state, Applicant was unable to provide inconsistent information to what had formerly been handled by two separate trap tag issuing entities.

Mr. Angell explained that the application continues to make a distinction whether the area declared is Area 2 "State waters only" and Area 2 "both State and Federal waters" because there are fishermen that possess the state license but do not own a boat that has a Federal lobster permit attached to it. Those individuals would be restricted to fishing only in the state waters of Area 2. *Deposition of Thomas E. Angell*, at 43-44.

Mr. Angell also stated that if the individual had only the state license, then no matter the number of vessels he owned, he would only have the one set of tags. If the individual owned several federally permitted vessels, then each vessel is allowed a set of tags. In addition, if the person owned a federally permitted lobster vessel and a state license as the operator/owner of a second vessel³, then he could obtain an allocation for the boat and an allocation for the state tags. *Id.* at 46-47. “Two sets of tags cannot be issued to either one individual or one vessel.” *Id.* at 47.

I have reviewed the MOU/MOA as well as various sections of the Regulations that were in effect at the time Applicant was denied the tags, to determine whether the Division has properly applied the state regulations.

The MOU/MOA cites the NMFS Regional Administrator’s authority, by agreement with state agencies, to allow trap tags issued by the agencies to be used and recognized as valid Federal lobster tags in compliance with Federal lobster management regulations. It recognizes the mutual effort of the NMFS and the DEM to streamline regulatory measures for management of the resource and reduce duplication of effort across state and Federal jurisdictional boundaries, and specifically to avoid the “double tag” requirement on lobster gear. The document then lists the specific agreements of the parties that include the following:

1. Federal lobster permit holders who have a Rhode Island mailing address on their Federal limited access lobster permit shall obtain valid lobster tags in satisfaction of Federal and state lobster tag requirements from RIDEM – DFW provided that all such lobster tags comply with the specifications set forth in Addendum I to Amendment #3 of the ISFMP, and all other provisions of this Agreement. Accordingly NMFS shall recognize any tag issued by RIDEM – DFW pursuant to this Agreement as satisfying Federal lobster tag regulations. Therefore, no Federal lobster permit holder will be required to affix more than one tag per trap.

³ When Applicant acquired a second vessel that was not federally permitted, he obtained the state tags. *Deposition of Thomas E. Angell*, at 62.

2. All lobster tags issued by RIDEM – DFW to Federal lobster permit holders subject to this agreement shall include on the tag an Exclusive Economic Zone (EEZ) designation. Any lobster tags issued by RIDEM – DFW to Federal lobster permit holders not authorized to fish in Rhode Island state waters will be issued a tag with a unique color.
3. ***
4. ***
5. The number of tags issued by RIDEM – DFW to each Federal lobster permit holder shall be determined by the trap tag limit (plus an additional 10% to cover trap loss) associated with each LCMA designated by the Federal lobster permit holder on the application to request lobster tags, consistent with Federal lobster regulations specified at 50 CFR 697.19
6. ***
7. ***
8. ***
9. ***
10. ***
11. Nothing is intended to conflict with NOAA/NMFS or RIDEM – DFW directives or regulations. If the terms of this Agreement are inconsistent with such directives or regulations, those portions of this Agreement that are inconsistent will be invalid, but the remaining terms and conditions shall remain in full force and effect. JT 3 Full at 4-5.

The Rhode Island Marine Fisheries Regulations filed with the Secretary of State's Office on June 22, 2000 established the Rhode Island lobster trap tag program and addressed an earlier version of the MOU/MOA (since the one in question was not effective until 2001) and the possibility of the future one. The regulations provided in part as follows:

15.14.1 Lobster Trap Tags – No person shall have on board a vessel or set, deploy, place, keep, maintain, lift, or raise; from, in, or upon the waters under the jurisdiction of the State of Rhode Island any lobster trap/pot as defined in 1.3 for taking of American lobster (*Homarus americanus*) without having a valid State of Rhode Island lobster trap tag permanently attached to the trap bridge or central cross member, that is clearly visible for inspection.

15.14.1-1 The State of Rhode Island, under a signed Memorandum of Agreement (MOA) with the Northeast Region, National Marine Fisheries Service (NMFS), shall recognize lobster trap tags issued by NMFS to a Federal Limited Access Lobster Permit holder as being valid within water under the jurisdiction of the state, provided that the Federal Limited Access Lobster Permit holder also possesses a valid state license pursuant to RIMFC Regulation 15.1.

15.14.1-4 Issuing Authority - - The Director of the Rhode Island Department of Environmental Management shall be the issuing authority (RIGL 20-2-28.2). The issuing authority shall issue lobster trap tags to residents licensed only to catch or take lobsters within the waters under the jurisdiction of the state. The Atlantic States Marine Fisheries Commission (ASMFC) – approved trap tag vendor may make actual trap tag issuance, but the issuing authority shall have complete oversight and responsibility for timeliness and accuracy.

- (a) For state-licensed residents and non-residents who possess a Federal Limited Access Lobster Permit, the Director of DEM may request authority to issue trap tags to Federal Limited Access Lobster Permit holders under a signed Memorandum of Agreement (MOA) with the National Marine Fisheries Service (NMFS). If such an agreement is not established, the NMFS shall be the issuing authority for those who possess a Federal Limited Access Lobster Permit.

15.14.1-8 Trap Tag Issuance – Lobster trap tags shall be valid from June 1 persons licensed by the State of Rhode Island to catch or take through May 31 annually. Official forms will be mailed to all American lobster

- (a) For holders of only a State of Rhode Island license for the catching and taking of lobsters within waters under the jurisdiction of the state, lobster trap tags shall be issued to the license holder. Commercial licensees may be issued their original trap tag allotment, as specified in RIMFC Regulations 15.12.3 and 15.14.1-12, plus a 10% over-allotment to allow for routine trap losses.

15.14.1-11 Violations

- (a) ***
- (b) ***
- (c) ***
- (d) It shall be a violation of these regulations to deploy more than the total maximum number of lobster traps authorized under 15.12.3 and 15.14.1-12

15.14.1-12 Trap Limits and Trap Tag Allotments – The following table describes the trap limits, schedule of trap reductions, and maximum allotment of trap tags for Rhode Island state waters of ASMFC Lobster Management Area 2. The maximum trap tag allotment includes a 10% over-allotment for routine losses.

Lobster Management Area	License Type	Effective Date	Trap Limit	Trap Tag Allotment
2	State Only	6/1/2000	1,000	0 - 1,100
2	State Only	6/1/2001	800	1 - 880

Other regulatory sections already in effect when the above regulations were adopted include the following:

15.2.1 Licensing of owner-operated vessels – No vessel may be used in the commercial taking of lobsters unless the operator is the registered or documented owner of said vessel. If a corporation is the documented owner of a vessel, the operator shall be the majority owner of that corporation

As well as the section cited in the denial letter:

15.12.3 Trap limit/Reduction Schedule – Effective June 1, 1999, it shall be unlawful for any person licensed under this chapter to place, set, keep, maintain, supervise, lift, raise or draw in from any of the waters in the jurisdiction of this state any pot or other fixed gear contrivance designed or adapted for the catching or taking of lobsters which exceeds the trap limits allowed by the following schedule:

6/1/1999 – 1200 traps per vessel
6/1/2000 – 1000 traps per vessel
6/1/2001 - 800 traps per vessel

Pursuant to section 15.12.3, for the fishing year commencing on June 1, 2001, any individual with a state license was limited to 800 traps per vessel. Section 15.2.1 provides that the operator of the vessel must also be its owner. Section 15.14.1-12 provides more specifics: those individuals with state licenses only, are limited to 800 traps, with a total trap tag allotment of 880 for state waters of ASMFC Lobster Management Area 2. Another section also concerns those individuals with only the state license: under 15.14.1-8, holders of only the state

license for 2001 had a trap limit of 800 per vessel (the reference to section 15.12.3) with a trap tag allotment of up to 880, including the 10% over-allotment for routine losses (the reference to section 15.14.1-12).

Applicant argues that the Federal permit belonged to the vessel and that he, as an individual, should be able to obtain separate trap tags from the State of Rhode Island. I have reviewed the sections of the NMFS Regulations that concern application for the limited access American lobster permit as well as the state's provision, set forth above, that requires the individual to also be the owner/operator of the vessel. Under the Federal provisions, the vessel's owner is required to apply for the permit (§ 697.4 (a) (7) (ii)) ; under the state provisions, the individual must be the owner/operator of the vessel (RIMFC Regulation § 15.2.1). I therefore agree with the Division's contention that this small difference in language is a difference without any substantive distinction.

Applicant, as owner/operator of the federally permitted F/V Catherine Ann, did not have **only** the state license. State provisions allowing issuance of trap tags to those individuals with only the state license are therefore inapplicable to this Applicant. Because of the Federal permit, the Federal regulations and the MOU/MOA govern the issuance of any trap tags to this Applicant.

As it was anticipated in section 15.14.1-4 (a), a new MOU/MOA was entered into between the DEM and the NMFS that granted authority to the DEM to issue Federal trap tags to state-licensed residents and non-residents who hold a Federal Limited Access Lobster Permit. The MOU/MOA provided that Federal lobster permit holders, with a Rhode Island mailing address, would obtain their lobster tags in satisfaction of Federal and state lobster tag requirements from the DEM Division of Fish and Wildlife.

Here, for 2001 Applicant had elected “Area 2 – state waters only; State of RI license only” when he and the designated vessel did not have only the one license. Div A Full at 3. That election did not apply to him. He was entitled to elect from those options that required the Federal Limited Access Lobster Permit: Area 1, Area 2 – both state and Federal waters; Area 3; Area 4; Area 5; Area 6; or the Outer Cape Lobster Management Area.

Applicant had also designated Area 2 (both state and Federal waters) and Area 3, as well as the 2/3 overlap. According to the Federal regulations, the trap limits for the most restrictive area applied, those imposed on Area 2. In effect, because of the area he had selected, it did not matter whether he had only the state license and received 880 trap tags only to be used in the state waters of Area 2, or whether he applied under the Federal Permit and elected Area 2. He was to receive 880 trap tags for the year 2001.

Due to the above interpretation, I find that the Division of Fish and Wildlife appropriately applied the regulations.

Therefore, based upon the pleadings, stipulations, exhibits and Deposition of Thomas E. Angell, and viewed in the light most favorable to each party when considering the opposing motions, I make the following

FINDINGS OF FACT

1. Alan Eagles holds a commercial fishing license from the State of Rhode Island.
2. The F/V Catherine Ann, which is owned by Alan Eagles, holds a Federal license, allowing it to fish for lobster in Federal waters.
3. In the year 2000, Mr. Eagles applied to the NMFS and elected Area 3 for his federally permitted vessel, the F/V Catherine Ann.
4. Pursuant to the declaration of Area 3, the F/V Catherine Ann received 1800 Federal trap tags plus the casualty amount, for a total allotment of 1980 tags.

5. In the year 2000, Mr. Eagles applied for state trap tags and declared the areas to be fished to be both Area 3 and the state waters of Area 2.
6. In the year 2000, Mr. Eagles received 1000 state trap tags, plus the casualty amount, for use in the state waters of Area 2.
7. In 2001, the Memorandum of Understanding (“MOU”, also referred to as a Memorandum of Agreement or “MOA”) between the RIDEM and the NMFS became effective.
8. In the year 2001, Mr. Eagles through his individual state license and on behalf of the federally permitted F/V Catherine Ann, applied for 880 state and 1980 Federal trap tags. In his application, he designated “Area 2 - State Waters only; State of RI license only” and “Area 3 - (must have a Federal Limited Access Lobster Permit)”. He also included the following handwritten notation: “+ 2/3 overlap”.
9. The request for state trap tags was denied in a letter from John Stolgitis dated April 16, 2001. The letter indicated that Applicant could be issued 880 trap tags under the Federal Lobster Permit because of the Area 2 declaration, or Applicant could change his declaration to harvest lobsters exclusively in Area 3 and be eligible to receive 1800 trap tags.
10. Alan C. Eagles and Ace Lobster Company filed the request for hearing at the Administrative Adjudication Division on April 26, 2001.

Based upon the above-undisputed facts, the arguments of the parties and my review of the pertinent state regulations and the MOU/MOA, I make the following

CONCLUSIONS OF LAW

1. That the Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. Pursuant to section 15.14.1-1 of the Rhode Island Marine Fisheries Council Regulations, the State of Rhode Island under an earlier MOU/MOA, recognized lobster trap tags issued by NMFS to a Federal Limited Access Lobster Permit holder as being valid within state waters provided that the holder also possessed a valid state license.

3. Pursuant to section 15.12.3 of the Rhode Island Marine Fisheries Council Regulations, in June 1, 2000 it was unlawful for any holder of a state license to place, set, keep, maintain, supervise, lift, raise or draw any gear for the taking of lobsters within the waters of the state in excess of 1000 traps per vessel.
4. In the year 2000, both state and Federal lobster trap tags were required for federally permitted vessels when fishing in the state waters of Area 2.
5. In the year 2000, because of Mr. Eagles' declaration on his state form that his federally-permitted vessel would be fishing in the state waters of Area 2, he was eligible to receive 1000 state trap tags, plus the casualty amount, to be placed in traps in conjunction with the Federal trap tag.
6. Pursuant to section 15.12.3 of the Rhode Island Marine Fisheries Council Regulations, in June 1, 2001 it was unlawful for any holder of a state license to place, set, keep, maintain, supervise, lift, raise or draw any gear for the taking of lobsters within the waters of the state in excess of 800 traps per vessel.
7. The 2001 MOU/MOA, *inter alia*, eliminated the necessity for "double tags", that is having both the state and Federal lobster trap tags on gear when a federally-permitted vessel was fishing in the state waters of Area 2. The MOU/MOA also provided that Federal lobster permit holders with RI mailing addresses would obtain their lobster tags in satisfaction of Federal and state lobster tag requirements from the RI Department of Environmental Management - Division of Fish and Wildlife.
8. Pursuant to the 2001 MOU/MOA, the Division would issue to each Federal lobster permit holder the number of tags determined by the trap tag limit (plus an additional 10% to cover trap loss) associated with each Lobster Management Area designated on the application, but limited to the most restrictive management measures for any one of the specified areas.
9. Pursuant to sections 15.14.1-4, 15.14.1-8 and 15.14.1-12 of the Rhode Island Marine Fisheries Council Regulations, for holders of only a State of Rhode Island license, state trap tags are required to be issued to the license holder.
10. Applicant, as owner/operator of the federally permitted F/V Catherine Ann is not a holder of "only a State of Rhode Island license" and is therefore not eligible for state trap tags.

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. Applicant's Motion for Summary Judgment is **DENIED**.
2. The Division's Cross Motion for Summary Judgment is **GRANTED**.
3. Applicant's request for state trap tags for use on the federally permitted vessel F/V Catherine Ann is **DENIED**.

Entered as an Administrative Order this 4th day of November, 2002 and herewith recommended to the Director for issuance as a Final Agency Order.

Mary F. McMahon
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Third Floor
Providence, Rhode Island 02908
401-222-1357

Entered as a Final Agency Order this 7th day of November, 2002.

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

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order on Cross-motions for Summary Judgment to be forwarded, via regular mail, postage prepaid to: Mark A. McSally, Esq., Kelly, Kelleher, Reilly & Simpson, 28 Caswell Street, Narragansett, RI 02882 and Gary Powers, DEM - Division of Fish & Wildlife, Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI 02879; and via interoffice mail to: Gerald McAvoy, Esquire, Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this _____ day of November, 2002.

If you are aggrieved by this final agency order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws §42-35-15.