

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

RE: CHAPMAN, RAYMOND F.

AAD No. 01-040/MSA

DECISION AND ORDER

This matter arises out of a denial of a renewal of a commercial fishing license to the Applicant, Raymond Chapman. Mr. Chapman requested a hearing on his denial.

Mr. Chapman appeared pro se and the Office of Management Services was represented by Deborah George, Esq. The hearing was held on June 8, 2001 at the offices of the Administrative Adjudication Division for Environmental Matters, 235 Promenade Street, Providence, Rhode Island. 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.

R.I. Gen. Laws §20-2-1.1, as amended by the General Assembly in its 2000 Session, reads in pertinent part:

20-2-1.1. Commercial fishing license moratorium – (a) . . . In order to obtain a license, applicable to these sections, between July 1, 2000 and June 30, 2001, an individual must provide proof that he/she possessed a valid Rhode Island commercial fishing license prior to July 1, 2000 and submit a license application to the department of environmental management prior to August 15, 2000. . . .

The burden of proof in this matter rests with the Applicant who must prove by a preponderance of the evidence that:

1. Applicant possessed a valid Rhode Island Commercial Fishing License prior to July 1, 2000; and
2. The one year moratorium is a hardship; and
3. The failure to apply on or before August 15, 2000 was due to circumstances beyond applicant's control

A brief prehearing conference was held immediately prior to the hearing. At that time the parties stipulated to the following facts:

1. The one year moratorium is a hardship for the Applicant.
2. The failure to apply on or before August 15, 2000 was due to circumstances beyond Applicant's control.

The parties agreed to the admission of the following documents:

MS 1 - Copy of Legal Notice

The only issue remaining for determination is whether Mr. Chapman possessed a valid R.I. Commercial Fishing License prior to July 1, 2000.

Mr. Chapman was sworn and testified on his own behalf. He stated that he previously held a valid R.I. commercial fishing license which he used for shellfishing. He testified that the last time he applied for a license renewal was in the early 1980's. He indicated that he held a license in the timeframe 1978 to the early 1980's and could so recall because he was unemployed during those years and earned a living by cutting lawns and shellfishing. He remembered that the fee for renewal during the years he held a license was approximately one hundred thirty five (\$135.00) dollars.

Under cross-examination Mr. Chapman testified that he had no receipts from shellfish sales, tax returns or other documents to evidence the fact that he held a previous license.

Margaret McGrath, Programming Services Officer, testified under oath on behalf of the Office of Management Services. Ms. McGrath stated that as part of her duties she has access to the records of commercial fishing license holders. She reviewed the records of her office and found no record of a previous license for Mr. Chapman.

Mr. Chapman did not cross-examine Ms. McGrath and there were no other witnesses.

I have carefully considered the testimony in this matter and conclude that Mr. Chapman has sustained his burden to prove by a preponderance of the evidence that he possessed a valid R.I. commercial fishing license prior to July 1, 2000. He testified under oath that he held such a license and recalled in some detail the importance of the license at that time in his life and how it provided a means of financial support. The fact that he did not retain sales receipts or copies of tax returns for transactions in excess of fifteen years old is not suspect.

I have also considered the testimony of Ms. McGrath and the lack of a record of Mr. Chapman's license. Recordkeeping, although reliable in most cases, is not the sole indicator of a previous license. Mr. Chapman's testimony was credible and sincere and sufficient to sustain his burden on this issue.

FINDINGS OF FACT

1. During the period 1978 to the early 1980's Raymond Chapman was unemployed and he earned a living by cutting lawns and shellfishing.
2. Raymond Chapman held a valid R.I. commercial fishing license in the timeframe 1978 to the early 1980's.
3. The one year moratorium is a hardship for the Applicant.
4. The failure to apply on or before August 15, 2000 was due to circumstances beyond Applicant's control.

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:

Applicant proved by a preponderance of the evidence that he possessed a valid R.I. commercial fishing license prior to July 1, 2000.

Based on the foregoing it is hereby

ORDERED

1. The appeal of Raymond Chapman for renewal of a commercial fishing license is **SUSTAINED**.
2. The Office of Boat Registration and Licensing shall renew Mr. Chapman's license for the season, July 1, 2000 through June 30, 2001, upon presentation of the appropriate renewal fee.
3. Raymond Chapman must present his application for renewal and renewal fee to the Office of Boat Registration and licensing on or before **June 30, 2001**.

Entered as a Recommended Decision and Order this 12th day of June, 2001.

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 13th day of June 2001.

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

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Raymond F. Chapman, 105 Newman Avenue, Rumford, RI 02916; and via interoffice mail to: Deborah George, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this _____day of June, 2001.

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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.