

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

RE: BANNICK, BRUCE

AAD No. 02-001/F&WA

FINAL ORDER OF DISMISSAL

This matter came before Hearing Officer McMahon for status conference on March 13, 2003. Applicant failed to appear or otherwise apprise the Hearing Officer of his inability to appear at said status conference. A Conditional Order of Dismissal was entered on March 14, 2003 which afforded Applicant until March 21, 2003 to show good cause why he should not be deemed to have waived his right to an adjudicatory hearing concerning the denial of his request to transfer Summer Flounder Exemption Certificate permit #53 from the F/V Fare Lady to the F/V Sarah Beth.

As of the date of this order, no objection to the Conditional Order of Dismissal has been received, nor has any correspondence been received by the Administrative Adjudication Division in response to the Conditional Order of Dismissal.

Wherefore, I make the following

FINDINGS OF FACT

1. A Status Conference Order was entered on February 24, 2003 scheduling this matter for March 13, 2003.
2. The Status Conference Order provided as follows:

If either party fails to appear at the status conference, the Hearing Officer, sua sponte, will issue a Seven (7) Day Conditional Order of Dismissal/Default against the non-attending party. at 1

3. Counsel for the Division of Fish and Wildlife appeared at the Status Conference on March 13, 2003.
4. Applicant failed to appear or otherwise advise the Hearing Officer of his inability to appear at the Status Conference on March 13, 2003.
5. A seven (7) day Conditional Order of Dismissal was entered against Applicant on March 14, 2003 affording Applicant until March 21, 2003 to show good cause why he should not be deemed to have waived his right to an adjudicatory hearing.
6. Applicant did not respond by March 21, 2003 and has not responded as of the date of this Order.

CONCLUSIONS OF LAW

Based upon the above findings of fact, I conclude the following as a matter of law:

1. Applicant Bruce Bannick has waived his right to an adjudicatory hearing on the denial of his request to transfer Summer Flounder Landing Exemption Certificate permit #53.
2. This Final Order of Dismissal constitutes a final administrative adjudication of the above-referenced appeal.

Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED

Applicant's appeal of the denial of his request to transfer Summer Flounder Landing Exemption Certificate permit #53 is DISMISSED.

Entered as an Administrative Order this 27th day of March, 2003 and herewith recommended to the Director for issuance as a Final Agency Order.

Mary F. McMahon
Hearing Officer
Administration Adjudication Division
235 Promenade Street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Order this 28th day of March 2003.

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 Order to be forwarded by first-class mail, postage prepaid, to Bruce Bannick, 621 East Shore Road, Jamestown, RI 02835; and via interoffice mail to: Gary Powers, Legal Counsel, DEM Office of Legal Services, Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI 0287; via interoffice mail to: Gerald McAvoy, Esquire, Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this _____ day of March, 2003.

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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.