

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

RE: JAMES H. LOW
LOBSTER TRAP ALLOCATION
MPURP 000623

AAD NO. 07-059/F&WA

AMENDED DECISION AND ORDER

This matter is before the Administrative Adjudication Division for Environmental Matters ("AAD") for reconsideration of the Decision and Order ("Decision") issued on January 25, 2008. The Decision was adverse to the Applicant for the sole reason that the medical documentation provided was inadequate because it was not notarized as required by the applicable regulations. The Decision afforded Mr. Low the opportunity to resubmit his medical documentation in notarized form. Consistent with the Decision, on February 25, 2008, Applicant filed a notarized statement from Dr. Bliss, identical in substance to the previously submitted document (Applicant's Exhibit 3). The Division of Fish and Wildlife was afforded ten (10) days from the date of filing to indicate any objection or response. None was filed. Upon consideration of the notarized statement filed by Applicant, I make the following additional/amended findings of fact and incorporate by reference the Findings of Fact set forth in the Decision.

Findings of Fact

The Applicant's physical impairment and nature and length of treatment were documented by Dr. Thomas F. Bliss, M.D., Clinical Assistant Professor of Adult Reconstructive Surgery at the Brown Medical School in a notarized statement filed on February 25, 2008.

Conclusions of Law

After due consideration of the documentary and testimonial evidence of record and based upon the original and amended findings of fact, I conclude the following as a matter of law:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. Applicant proved by a preponderance of the evidence, consistent with the notarization requirements of the Regulations, that he had reduced fishing performance during the three year period 2001 – 2003 inclusive, due to material incapacitation as defined in Section 15.14.2-2 of the Regulations.

3. Applicant proved by a preponderance of the evidence that he is entitled to a modification of the Initial 2007 RI/Area 2 Lobster Trap Allocation pursuant to section 15.14.2-8(b) of the April, 2007 Regulations.

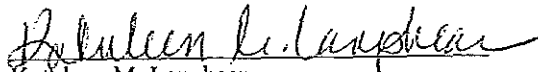
Based on the foregoing, it is hereby

ORDERED

1. Applicant's appeal of his 2007 Initial Area 2 Lobster Trap Allocation is SUSTAINED.
2. The Division of Fish and Wildlife shall recalculate the Applicant's Initial 2007 RI/Area 2 Lobster Trap Allocation based on his fishing performance in the years 1999 and 2000 and notify Applicant of the recalculation on or before April 4, 2008.

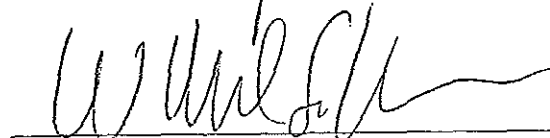
Entered as an Amended Recommended Decision and Order this 13th day of March, 2008 and

herewith forwarded to the Director for issuance as a Final Agency Order.



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

Entered as a Final Agency Order this 5th day of April, 2008



W. Michael Sullivan, PhD.

Director
Rhode Island Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, RI 02908
(401) 222-2771

As amended by interoffice memorandum dated 3/26/08