

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

RE: SERIO, MARK
LOBSTER TRAP ALLOCATION CLF 000113

AAD No. 07-092/F&WA

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters (AAD) pursuant to Applicant's request for hearing on the denial of an Initial 2007 RI/Area 2 Lobster Trap Allocation by the Department of Environmental Management, Division of Fish and Wildlife (Division). The Division had determined that the application was submitted after the application deadline of February 1, 2007.

The hearing was conducted on October 15, 2007. Applicant Mark Serio appeared on his own behalf. Gary Powers, Esq. appeared on behalf of the Division.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS § 42-17.7-1 *et seq.*); the *Administrative Procedures Act* (R.I. GEN. LAWS § 42-35-1 *et seq.*); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters (AAD Rules)*; and the *Rhode Island Marine Fisheries Regulations, Part XV, Lobsters, Other Crustaceans, and Horseshoe Crabs (Marine Fisheries Regulations)*.

PREHEARING CONFERENCE

A prehearing conference was conducted on October 15, 2007. The parties agreed to the following stipulations of fact:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. In a letter from the Division dated May 4, 2007, the Applicant was notified that it had not received an application from the Applicant requesting a determination as the Applicant's Initial Area 2 Lobster Trap Allocation. The May 4, 2007 letter also provided the Applicant with a form to request a determination as to what the Applicant's Initial Area 2 Lobster Trap Allocation would have been had it been submitted within the required time period.
3. The form provided to the Applicant with the May 4, 2007 letter was completed and dated May 8, 2007 by the Applicant.
4. The form dated May 8, 2007 was received by the Division on May 14, 2007 and upon its receipt by the Division was the first application by the Applicant for a determination of Initial Area 2 Lobster Trap Allocation to be received by the Division.
5. In a letter received by the AAD on July 6, 2007, the Applicant requested a hearing before the AAD concerning the letter dated June 7, 2007 from the Division.

Applicant identified the following as issues to be considered by the Hearing Officer at the hearing:

1. Regarding the untimeliness of submitting the application, the certified mail sent to the Applicant with the application was returned to the DEM for insufficient postage.
2. Applicant never received the application by regular mail.
3. Applicant claims medical hardship.
4. Applicant did not possess the license in 1999-2000. He obtained the Commercial Fishing License with lobster endorsement through the lottery conducted in 2003.

The Division identified the following as issues to be considered by the Hearing Officer at the hearing:

1. The Division's determination that the Applicant was untimely in the submission of an application for the Division for his Initial Lobster Management Area 2 Lobster Trap Allocation, was consistent with the requirements of Part 15.14.2 -- Area 2 Lobster Trap Effort Control that was duly promulgated pursuant to R.I. GEN. LAWS § 42-35-1 *et seq.*

2. The governing regulations, i.e., Part 15.14.2 -- Area 2 Lobster Trap Effort Control, have no provision whereby applicants who were first issued a Commercial Fishing License (CFL) authorizing the deployment of lobster traps for the commercial taking of lobster in 2003 may be afforded a special exception in the determination of the applicant's Initial Lobster Management Area 2 Lobster Trap Allocation solely on the basis of the year in which the applicant was first issued a CFL. Therefore, had the Applicant submitted a timely application for a determination as to his Initial Lobster Management Area 2 Lobster Trap Allocation, the Division would have been required to calculate his Initial Lobster Management Area 2 Lobster Trap Allocation to be zero (0) traps pursuant to R.I.M.F.R. Parts 15.14.2 *et seq.*
3. That if the medical exception is claimed, whether the Applicant has failed to demonstrate that he is entitled to the exception under the applicable regulations.

A list of the exhibits that were presented by the parties is attached to this Decision as Appendix A.

HEARING SUMMARY

In correspondence dated June 7, 2007, the Division informed Mr. Serio that his application for a 2007 RI/Area 2 Initial Lobster Trap Allocation for RI commercial fishing license CFL #000113 was denied because it was untimely submitted. Div. 1; Appl 2. Applicant filed his request for hearing at the AAD on July 6, 2007. Div. 2.

The hearing was conducted immediately following the prehearing conference on October 15, 2007. Applicant bears the burden of proving by a preponderance of the evidence that he is entitled to an Initial 2007 RI/Area 2 Lobster Trap Allocation pursuant to section 15.14.2-5 of the *Marine Fisheries Regulations*.

The Applicant presented two (2) witnesses: Mark Serio, the Applicant; and Thomas Angell. The Division called one (1) witness: Thomas Angell, a Principal Marine Biologist in the Division of Fish and Wildlife who, by agreement, was qualified as an expert concerning the lobster fishery and in the interpretation and application of the Department's lobster regulations.

Mr. Serio stated that he wants his 100 lobster traps back. He testified that he was first informed of the process for obtaining a 2007 RI / Area 2 Initial Trap Allocation when he called Scott [Olszewski], a DEM employee at Fort Wetherill, in March or April 2007. He had been waiting to receive his allocation but Scott told him that he had not sent in the application form. According to Mr. Serio, Scott told him that he would send him the proper forms. Approximately three weeks later Mr. Serio received a call from Thomas Angell informing him that the matter had been overlooked. Mr. Serio received the application form the following day.

The May 4, 2007 correspondence from Mark R. Gibson, Deputy Chief of the Division, that accompanied the application form states that the Division had sent the application to all commercial license holders by certified mail on October 31, 2006. The letter acknowledges, however, that the certified mail sent to Mr. Serio was returned to the Division due to lack of postage, "but a second attempt was made to send you the application via regular mail on November 15, 2006." Div. 4; Appl 1 at 1. The document also states the following:

[D]ue to a recent policy decision by my superiors, the [Division] will allow you to submit the application form for determination of your 2007 RI / Area 2 Initial Trap Allocation. The application form will be marked as being received after the December 31, 2006 submission deadline and will be reviewed by a committee of my superiors who will decide if the application will be accepted. If the application is accepted, you will receive a letter that indicates your 2007 RI / Area 2 Initial Trap Allocation. *Id.*

On May 8, 2007 Applicant sent the completed application to the Division. Div. 5.

By correspondence from the Division dated June 7, 2007, Mr. Serio was informed that his application for a 2007 RI/Area 2 Initial Lobster Trap Allocation for RI commercial fishing license #CFL000113 was rejected because the application was submitted after the end of the application period (after February 1, 2007). Div. 1; Appl 2. The correspondence also states the following:

[T]his process may be informally resolved by submission of documentation demonstrating why good cause exists for your untimely application submission, however you must file an appeal with AAD in order for the informal resolution process to occur ...

(emphasis in original).

Having addressed the issue of the application's untimely submission, Mr. Serio also claimed a medical hardship. He provided correspondence from Dr. Joseph P. Giancaspro, M.D., dated July 26, 2007, that states that Mark Serio has been "under [his] care from 2003 to 2007 due to complications from two separate back injuries." The document provides no further information and is not notarized. Appl 3. Although Mr. Serio has asserted a medical hardship, he acknowledged that he has no lobster fishing history for 1999 - 2000 because he did not possess the license during those years. He obtained the Commercial Fishing License (CFL) with a lobster endorsement of 100 traps in 2003.

The Division waived cross-examination of the witness.

Applicant then called Thomas Angell as a witness. Mr. Angell stated that the trap allocation program was drafted in 2006; that it had been developed by the Atlantic States Marine Fisheries Commission (ASMFC) and was adopted by the State of Rhode Island. The program makes no specific exceptions for holders of CFLs.

He acknowledged that CFLs were only issued one time, in 2003 when the license restructuring was achieved. Mr. Angell explained that the Director of the Department at that time had decided that the moratorium on the full lobster license should be eased to allow fifty (50) new, limited licenses that permitted 100 traps per license. Because the licenses were only issued that one time in 2003, it is "unlikely" the holders would have any fishing history for 1999 - 2000.

The Division waived cross-examination of the witness. Applicant then rested his case.

The Division's only witness was Thomas Angell. Mr. Angell stated that his primary responsibility in the Division of Fish and Wildlife's Marine Fisheries section is to research and monitor the lobster fishery. He is also the state's representative on the Lobster Technical

Committee of the Atlantic States Marine Fisheries Commission (ASMFC) and provides staff support for the Rhode Island Marine Fisheries Council Lobster Advisory Panel.

The witness explained that the ASMFC Lobster Technical Committee gathered data on the lobster resource and concluded in studies from 1996, 2000 and 2006 that the lobster stock in Area 2 was overfished. In order to address their concerns, various management initiatives were adopted: the minimum size of legal lobsters was increased; the size of the escape vent was increased; a catch limit was imposed on nontrap lobstermen; and most recently, a lobster trap effort control plan was adopted for Area 2.

Mr. Angell testified that Rhode Island was required to adopt the lobster trap effort control plan or its "conservation equivalency." If the state did not comply, then the U.S. Secretaries of Commerce and the Interior could take steps to impose a moratorium on the lobster fishery. As the staff liaison to the Lobster Advisory Panel, Mr. Angell took the provisions of the lobster trap effort control plan, also referred to as *Addendum VII*, and drafted regulatory language for the Lobster Advisory Panel to consider, and for the Panel to make recommendations to the Rhode Island Marine Fisheries Council (RIMFC). The RIMFC then made its recommendations to the Director of the Department of Environmental Management (Department), ultimately resulting in the adoption of the lobster trap effort control plan.

According to the witness, after the regulations had been adopted, applications for a lobster trap allocation were sent by certified mail to each eligible commercial license holder. Mr. Angell acknowledged that Mark Serio's certified mail, sent on October 31, 2006, was returned to the Division for lack of postage. Appl 1. Instead of re-sending the application by certified mail with the proper postage, however, Thomas Angell sent the application package out to Mr. Serio by regular mail on November 15, 2006. The package was not returned to the Division as undeliverable.

Mr. Angell stated that the application was received by the Division on May 14, 2007. Div. 5. Mr. Angell reviewed Mr. Serio's landings history and determined that the Initial Trap Allocation was zero (0).

The witness explained the difference in the two deadlines for submitting the application. The correspondence from Mark Gibson dated May 4, 2007 discusses the deadline of December 31, 2006. Appl 1. Correspondence dated June 7, 2007, also from Mark Gibson, states that Mr. Serio's application was submitted "after the application deadline of February 1, 2007." Appl 2. Mr. Angell testified that the Director had initiated changes to the program that allowed applications submitted by February 1 to be considered timely.

The Division provided a summary of Applicant's lobster landings for the period 1999 through 2004. Div. 3. The information, compiled from a review of the database and of logbooks, reveals that no pounds of lobster were landed and no traps were reported fished, resulting in a zero (0) Lobster Trap Allocation. Mr. Angell stated that if an applicant could demonstrate a medical or military hardship and if there had been landings in 2004¹, then the data from 1999 and/or 2000 could be used to calculate an alternative Lobster Trap Allocation.

The witness acknowledged that it is impossible for holders of CFLs, as is Mr. Serio, to use the medical or military hardship exception to calculate an alternative allocation because the CFL holders received their licenses in 2003 and have no lobster landing data for 1999 and 2000. Mr. Angell stated that there had been "internal discussions" at the Division level regarding the regulation's impact on CFLs but that a determination was made to treat CFL holders in the same manner as other license holders.

The witness concluded that in this case, even if Mr. Serio had held a Multipurpose

¹ The witness was applying the provisions of the November 22, 2006 regulations.

License, because of the lack of landings from 1999 through 2004, he would not have been able to obtain a modification of the zero (0) Lobster Trap Allocation.

Applicant waived cross-examination of the witness. The Division then rested its case.

In Applicant's closing argument he stated that comparing Multipurpose Licenses to CFLs was comparing "apples to oranges." Multipurpose License holders have a landings history and CFLs, by their very nature, have no history before 2003. He concluded that the situation was unjust.

In his closing argument, Division's counsel first contended that Applicant had failed to timely submit the application. If the application was considered timely, however, counsel claimed that the outcome would be the same: a zero (0) allocation for Mr. Serio because of the absence of any landing activity for the years 1999 through 2004.

Counsel also assailed the medical evidence presented by Mr. Serio but added that even if he had met his burden of proof as to the elements of the medical exception, Applicant had no landings in 2004 and had no history for 1999 and 2000 to consider for an alternative calculation. He claimed that to treat CFL holders differently from those with Multipurpose Licenses would amount to "special treatment" for those individuals.

Analysis

Although the Division applied the provisions of the *Marine Fisheries Regulations* as adopted on November 22, 2006 to the appeal in this matter, the recent decision in *Re: Charles Borden*, AAD No. 07-028/F&WA, Final Agency Order entered on December 31, 2007, made clear that the later, amended *Marine Fisheries Regulations*² "were promulgated

² The November 22, 2006 regulations were amended on April 11, 2007 (effective May 1, 2007) and again on August 1, 2007 (effective August 21, 2007).

with the intent that they be in place prior to making any final decisions on appeals.” at 2. I therefore am applying the provisions of the most recent *Marine Fisheries Regulations*, as amended August 1, 2007, to Mr. Serio’s appeal.

Whether Mr. Serio’s late application for a Lobster Trap Allocation can even be considered is a threshold issue. Section 15.14.2-7 of the *Marine Fisheries Regulations* provides the following application deadline for a Lobster Trap Allocation:

15.14.2-7 – Application for Initial Area 2 LTA

- (a) To obtain an Initial Area 2 LTA, individuals must apply to the Department, on forms provided by the Department, by February 1, 2007.
- (b) ***
- (c) If an applicant seeks consideration pursuant to the material incapacitation provisions set forth in section 15.14.2-8, the applicant must submit the appropriate documentation along with his/her application.
- (d) ***

The issue of the late filing of an application for a Lobster Trap Allocation was considered in *Re: Amato, Joseph*, AAD No. 07-081/F&WA, Decision and Order entered as a Final Agency Order on October 24, 2007. The Decision discussed the lack of regulatory language indicating that the filing deadline was mandatory and jurisdictional. The Decision also considered the Division’s actions in considering some untimely applications while rejecting others:

In some instances, the Applications were accepted and Allocations were awarded consistent with the formula and process established in the Regulations. The practice of the Division/Review Panel in entertaining late filings is a clear indication that the Division has not interpreted the filing deadline as a mandatory or jurisdictional bar to consideration of a late Application. The evidence of record demonstrates that in some instances Applications filed after the December 31, 2006 deadline³ were accepted if the Division/Review Panel determined that the reasons presented were adequate or otherwise justified a filing out of time. Absent prejudice to the Division, any doubts regarding demonstration of good cause should be resolved in favor of [the Applicant]. I find no prejudice to the Division in accepting the Application out of time. The outcome is that the Application is evaluated on its merits, applying the standards set forth in the Regulations. at 5-6.

³ This deadline was established in the November 22, 2006 regulations and amended to February 1, 2007 in the April 11, 2007 regulations. The February 1, 2007 deadline was not changed in the August 1, 2007 regulations.

In this matter, Mr. Angell testified that although he was aware that the Applicant had not received the certified mail that had been sent to all of the other license holders (because it was returned to the Division for insufficient postage), Mr. Angell re-sent the application form by regular mail. Mr. Serio testified that he did not receive the form sent via regular mail. He also testified that he called the Division when time had passed and he had not received a Lobster Trap Allocation. Based upon Mr. Serio's uncontradicted testimonial evidence, I conclude that he has successfully rebutted the presumption that the application form, sent by regular mail, was received by him. Once Mr. Serio received the application form with the May 4, 2007 correspondence from Deputy Chief Gibson, he quickly submitted it for the Division's consideration.

I find no prejudice to the Division for its consideration of Mr. Serio's application out of time. Based upon the reasoning set forth in the *Amato* Decision, I conclude that Mr. Serio has demonstrated good cause for the untimely submission of the application. His application should therefore be considered on its merits.

The Division presented evidence that Applicant had no pounds landed and no reported traps fished for the years 2001 through 2003 (Div 3), which would have resulted in a Lobster Trap Allocation of zero (0). The November 22, 2006 regulations as well as the later amendments allowed an alternative calculation that considers lobster trap history from 1999 and 2000 if certain standards are met. Although both parties testified regarding the medical hardship exception established in the November 22, 2006 regulations, the *Borden* Final Agency Order clarified that the later amendments were to be considered in matters heard before the AAD.

The amendments that were adopted after the November 22, 2006 regulations no longer employ the medical hardship standard. The amendments now require proof of "material incapacitation". The pertinent provisions of the *Marine Fisheries Regulations* are set forth below.

Section 15.14.2-2 of the regulations defines "material incapacitation" to mean:

a verifiable event beyond the control of the license/permit holder, such as a medical condition, that adversely affected his/her fishing performance during the three-year period 2001 - 2003, inclusive. Military service performed during the three-year period 2001 - 2003 also constitutes material incapacitation. Other than a decision to serve in the military, material incapacitation can not involve a choice by the license/permit holder to pursue other interests; or to a short-term illness or injury that would not have incapacitated a person for the three qualifying years.

Section 15.14.2-8 sets forth the procedure to claim "material incapacitation" and to request the alternative calculation of the Lobster Trap Allocation:

(a) An individual who meets the qualifying criteria set forth in sections 15.14.2-6(a) (i) and (iii), but had no documented, or had reduced, fishing performance during the three-year period 2001 - 2003, inclusive, due to material incapacitation, as specified in section 15.14.2-2 herein, and as further described below, may request that his/her initial Area 2 LTA be based on his/her fishing performance in Area 2 during the period 1999 - 2000.

(b) In order to establish material incapacitation on the basis of a medical condition, an applicant must present the following notarized documentation, which may pertain to the applicant or to the applicant's family member, i.e. a parent, spouse, child, mother-in-law, or father-in-law:

(i) Evidence that the applicant or family member had a physical or mental impairment during the period 2001 - 2003, inclusive, involving inpatient care in a hospital, a nursing home, or a hospice, or outpatient care requiring continuing treatment or supervision by a health care provider ...

(c) ***

(d) ***

(e) ***

Mr. Serio provided scant evidence to substantiate that he had had a material incapacitation, presenting only a one sentence letter from Dr. Joseph Giancaspro: "That Mark Serio has been under my care from 2003 to 2007 due to complications from two separate back injuries." Appl 3. The letter is not notarized as required in section 15.14.2-8(b) of the *Marine Fisheries Regulations*. It does not indicate that the injuries impacted Mr. Serio's fishing performance for the full three-year period 2001 – 2003. See Re: Charles Borden, AAD No. 07-028/F&WA, Decision and Order entered on December 31, 2007 at 3. The letter does not even indicate that the injuries were such that they adversely affected his fishing performance in 2003.

Although Mr. Serio has claimed medical hardship/material incapacitation, he was aware that obtaining the alternative calculation, by using pounds landed or reported traps fished for the years 1999 and 2000, would be to no avail because the CFL he held was only issued in the year 2003. As with all other holders of that limited license, he had no fishing history prior to 2003. As a result, the alternative calculation that is available to holders of Multipurpose Licenses and to holders of Principal Effort Licenses is not available to CFL holders like Mr. Serio.

Since the Applicant has not proven material incapacitation, however, it is unnecessary for me to address the issue of the reasonableness of providing an illusory alternative calculation to CFL holders.

Based upon the testimony and documentary evidence presented at the hearing, I conclude that Mr. Serio has not proven he had no documented fishing performance even for the one year -2003, due to material incapacitation as set forth in sections 15.14.2-2 and 15.14.2-8 of the *Marine Fisheries Regulations*. Applicant has failed to prove that he is entitled to a modification of the Initial 2007 RI/Area 2 Lobster Trap Allocation of zero (0) traps.

Wherefore, after considering the stipulations of the parties and the testimonial and documentary evidence of record, I make the following:

FINDINGS OF FACT

1. On October 31, 2006 the Division sent an application package for an Initial 2007 RI/Area 2 Lobster Trap Allocation to Mark Serio by certified mail.
2. The certified mail was returned to the Division for lack of postage.
3. On November 15, 2006 the Division sent the application package to Mr. Serio by regular mail.
4. Mr. Serio did not receive the application package that was sent on November 15, 2006.
5. In March or April, 2006 Mr. Serio contacted the Division to inquire about the Initial 2007 RI/Area 2 Lobster Trap Allocation.
6. On May 4, 2007 the Division notified Mr. Serio that it had not received Mr. Serio's application and enclosed an application form with the correspondence.
7. On May 8, 2007 Applicant sent the completed application to the Division.
8. On June 7, 2007 the Division rejected Mr. Serio's application for an Initial 2007 RI/Area 2 Lobster Trap Allocation because it was submitted after the end of the application period (after February 1, 2007).
9. Applicant filed a request for hearing at the Administrative Adjudication Division on July 6, 2007.
10. There is no prejudice to the Division for it to consider Mr. Serio's application out of time.
11. Fifty (50) Commercial Fishing Licenses (CFLs) with the lobster endorsement were issued one time, in 2003.
12. The CFLs with lobster endorsement authorized one hundred (100) traps.
13. Applicant received a CFL with lobster endorsement in 2003.
14. CFL holders, including the Applicant, have no lobster landing data for 1999, 2000, 2001 and 2002.
15. Applicant had no lobster landing data for 2003.

16. Applicant provided correspondence from Dr. Joseph Giancaspro stating that Mark Serio had been under his care "from 2003 to 2007 due to complications from two separate back injuries".
17. The correspondence does not indicate the severity of the injuries nor their impact on Mr. Serio's fishing performance.
18. The correspondence is not notarized.

CONCLUSIONS OF LAW

After due consideration of the testimonial and documentary evidence of record and based upon the above 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 successfully rebutted the legal presumption that he received the application package that was sent by regular mail on November 15, 2006.
3. Applicant has demonstrated good cause for the untimely submission of his application.
4. Mr. Serio's application for an Initial 2007 RI/Area 2 Lobster Trap Allocation should be considered on its merits.
5. The *Marine Fisheries Regulations*, as amended August 1, 2007, were promulgated with the intent that they be in place prior to making any final decisions on appeals.
6. The *Marine Fisheries Regulations*, as amended August 1, 2007, apply to the final decision in this matter.
7. In accordance with the provisions of section 15.14.2-9 of the *Marine Fisheries Regulations*, the Initial 2007 RI/Area 2 Lobster Trap Allocation for RI Commercial License # CFL000113 is zero (0) traps.
8. Applicant failed to present notarized documentation of his medical condition to establish material incapacitation as required by section 15.14.2-8(b) of the *Marine Fisheries Regulations*.

9. Applicant failed to prove by a preponderance of the evidence that his injuries constituted a material incapacitation as defined in section 15.14.2-2 of the *Marine Fisheries Regulations*.
10. Applicant has failed to prove by a preponderance of the evidence that he is entitled to a modification of the Initial 2007 RI/Area 2 Lobster Trap Allocation for RI Commercial License # CFL000113.

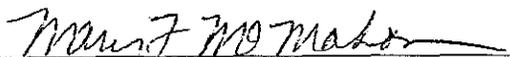
Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. Applicant is issued an Initial 2007 RI/Area 2 Lobster Trap Allocation for RI Commercial License # CFL000113 of zero (0) traps.
2. Applicant's request for a modification of the Initial 2007 RI/Area 2 Lobster Trap Allocation is DENIED.
3. The Initial 2007 RI/Area 2 Lobster Trap Allocation for RI Commercial License # CFL000113 shall remain at zero (0) traps.

Entered as an Administrative Order this 25th day of February, 2008 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, RI 02908
(401) 222-1357

Entered as a Final Agency Decision and Order this 25th day of

February, 2008.



W. Michael Sullivan Ph.D.

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 to be forwarded, via regular mail, postage prepaid to: Mark Serio, 23 Prosser Trail, Charlestown, RI 02813; via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 26th day of February, 2008.



NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI Gen. Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

APPENDIX A
LIST OF EXHIBITS

APPLICANT'S EXHIBITS

- Appl 1 Copy of correspondence from Mark R. Gibson, Deputy Chief, dated May 4,
Full 2007 (3 pages)
- Appl 2 Copy of correspondence from Mark R. Gibson, Deputy Chief, dated June 7,
Full 2007 (1 page)
- Appl 3 Correspondence from Dr. Joseph P. Giancaspro, MD, dated July 26, 2007
Full (1 page)

DIVISION OF FISH AND WILDLIFE'S EXHIBITS

- Div 1 Copy of correspondence form Mark R. Gibson, dated June 7, 2007 (1 page)
Full
- Div. 2 Copy of Applicant's hearing request (1 page)
Full
- Div 3 Summary of Division's records regarding Applicant's Lobster Landings and
Full Trap Deployment Data for the years 1999, 2000, 2001, 2002, 2003 and 2004
(1 page)
- Div 4 Copy of correspondence from Mark R. Gibson, Deputy Chief, dated May 4,
Full 2007 (1 page)
- Div 5 Copy of completed Rhode Island/Area 2 Lobster Trap Allocation Form dated
Full 5/8/07 (2 pages)
- Div 6 *Curriculum vita* of Thomas E. Angell (2 pages)
Full