

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
Re: Mataronas, Gary Jr.
AAD No. 07-006/F&WA
Lobster Trap Allocation MPURP000132
June, 2007

DECISION AND ORDER

This matter came before the Administrative Adjudication Division for Environmental Matters (AAD) pursuant to the request for hearing dated January 24, 2007 and filed by Gary Mataronas, Jr. (Applicant) on January 30, 2007 concerning Applicant's Initial 2007 RI/Area 2 Lobster Trap Allocation. The Allocation was established by letter from the Department of Environmental Management, Division of Fish and Wildlife (Division) dated January 17, 2007. A prehearing conference was conducted on March 1, 2007 and the hearing commenced immediately thereafter. The Division was represented by Gary Powers, Esq. Mr. Mataronas represented himself. The proceedings were 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.); Section 15.14.2-5 of "PART XV: Lobsters, Other Crustaceans, and Horseshoe Crabs" of the Rhode Island Marine Fisheries Regulations (Marine Fisheries Regulations) and the Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters (AAD Rules).

PREHEARING CONFERENCE

At the prehearing conference, 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. The Applicant received a Notice of Initial Area 2 Lobster Trap Allocation from the Division dated January 17, 2007 advising the Applicant that his initial 2007 allocation was determined to be Two Hundred Fifty (250) traps based upon his reported activity in the lobster fishery in the target period of the years 2001 through 2003.

A list of the exhibits, marked as they were admitted at the hearing, is attached to this Decision as Appendix A.

HEARING SUMMARY

The Applicant, Gary Mataronas, Jr., testified on his own behalf. Mr. Mataronas' testimony, as well as the documents he presented at the hearing, demonstrate that he has had a keen desire to be a "Lobster Man" since his youth, and that he has been arduously pursuing his commercial lobster fishery endeavor since he was ten years old.

Mr. Mataronas testified that he is managing his own lobster boat, and the figures which he reported in his 2002 and 2003 Lobster Catch and Effort Logbooks were "just a guesstimate". He stated that it is hard to keep track of the number of traps hauled; and that "the number he wrote down was incorrect".

Thomas E. Angell, a Principal Marine Biologist with the Division, was called as a witness for Division. Mr. Angell testified as a lay witness and also as an expert witness in lobster fishery and as an expert witness in the interpretation and application of the Department's lobster regulations.

It was the testimony of Mr. Angell that in his opinion the Applicant's initial two hundred fifty (250) lobster trap allocation was determined in a manner that accurately and consistently reflected the requirements of Part 15.14.2 - Area 2 Lobster Trap Effort Control based upon the data provided by the Applicant relative to his participation in the lobster fishery during the target years of 2001-2003.

Mr. Angell testified that the Atlantic States Marine Fisheries Commission (ASMFC) adopted Addendum VII in an effort to address the problem of over fishing faced by American Lobsters in Lobster Management Area 2 (which is an area primarily composed of the state and federal waters bordering Rhode Island, Massachusetts south of Cape Cod, and limited portions of Connecticut and New York). The goal of Addendum VII was to reduce the fishing effort in the lobster fishery by reducing the number of traps authorized to be deployed in Lobster Management Area 2.

Mr. Angell testified that if the Department refused to adopt or apply the subject regulations in order to comply with the efforts of the ASMFC lobster management plan, the State of Rhode Island faced a finding of noncompliance by the ASMFC; and thereby with it the imposition of a moratorium on the landing of any lobsters in this state, which would crush the fishing industry. It was explained by Mr. Angel that the only exception in Parts 15.14.2 of Marine Fisheries Regulations "would be in case of a medical hardship or military service during that qualifying period." It was Mr. Angell's opinion that the Applicant had not presented anything that would warrant a modification of the Applicant's 250 lobster trap allocation.

CONCLUSION

It is undisputed that the Applicant's Initial Area 2 Lobster Trap Allocation of two hundred fifty (250) traps was based on the Applicant's reported activity in the lobster fishery in the target period of the years 2001 through 2003 as reflected in the state-issued logbooks for those years that were completed and submitted to the Division by the Applicant.

Mr. Mataronas also concedes that the Applicant's allocation determination was accomplished in accordance with the requirements of Part 15.14.2 - Area 2 Lobster Trap Effort Control based on the data provided by the Applicant himself.

In support of his attempt to demonstrate his long standing ambitions and keen interest in the lobster fishery, Applicant submitted his eighth grade year book photograph (Applicant's Exhibit #2 Full) with its statement that his ambition was to be a "Lobster Man", and also his High School Resume (Applicant's Exhibit #3 Full) in which Applicant asserted that he had done "everything from hauling and setting over 300 lobster traps".

It is Division's contention that pursuant to the Marine Fisheries Regulations the State-issued recall-log catch reports and/or logbooks signed by the license/permit holder are considered the best available data; and that logbooks or catch reports for the qualifying period which have been signed by the Area 2 Trap Allocation Applicant shall not be allowed to be contradicted by the furnishing of additional catch/effort data that is inconsistent with the records already furnished to state and federal government.

Wherefore, it is argued by Division since the Applicant has failed to satisfy his burden of proof in this matter, the Applicant is required to be awarded two hundred fifty (250) traps as his Initial Lobster Management Area 2 Lobster Trap Allocation based upon the data submitted by the Applicant in the required state-issued logbooks.

The issue for consideration herein is whether the Applicant has proven by a preponderance of the evidence that he is entitled to a modification of the Initial Trap Allocation pursuant to Section 15.14.2-5 of the Marine Fisheries Regulations. I was certainly impressed by the Applicant's background, diligence and accomplishments in the lobster fishery. However, the Applicant has failed to introduce any pertinent evidence that would demonstrate that he is entitled to a modification of his Initial Trap Allocation. In any event, the log books or catch reports for the

qualifying period which have been signed and submitted by the Area 2 Trap Allocation applicant are considered to be the best available data.

Every licensed lobster fisher has been statutorily obligated to "... report catch and *effort* statistics upon forms furnished by the department" since 1981 pursuant to R.I. Gen. Laws § 20-7-9.

(Emphasis added.) Given this statutory obligation, the governing regulations Marine Fisheries Regulations Parts 15.14.2 *et seq.* - Area 2 Lobster Trap Effort Control reference the logbooks at Parts 15.14.2-3 (c) (1) and further provide in part in Parts 15.14.2-5 (c) relative to date disputes that:

"State-issued recall-log catch reports and/or logbooks signed by the license/permit holder are considered the best available data. Therefore, logbooks or catch reports for the qualifying period which have been signed by the Area 2 Trap Allocation applicant shall not be allowed to be contradicted by the furnishing of additional catch/effort data that is inconsistent with the records already furnished to state and federal government."

The Administrative Adjudication Division is a statutory tribunal, and as such the jurisdiction of AAD is circumscribed by its enabling legislation and other statutes. The AAD was established by Chapter 17.7 of Title 42 of the R.I. GEN. LAWS. The AAD is charged per § 42-17.7-2 with the authority to hear licensing proceedings pursuant to the regulations promulgated by the Director of the Department of Environmental Management.

The Applicant failed to cite any statutory or regulatory authority that would permit the AAD to grant the requested modification of his Initial Trap Allocation as established by Division pursuant to Section 15.14.2-3 of the Marine Fisheries Regulations.

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

FINDINGS OF FACT

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant, Gary Mataronas, Jr.
2. The Applicant received a Notice of Initial Area 2 Lobster Trap Allocation (Allocation) from the Division of Fish and Wildlife (Division) dated January 17, 2007 advising the Applicant that his initial 2007 Allocation was determined to be Two Hundred Fifty (250) traps based upon his reported lobster landings and trap deployment data in the lobster fishery in the target period of the years 2001 through 2003.
3. On January 30, 2007 the Applicant filed a request for an adjudicatory hearing at the Administrative Adjudication Division.
4. The data upon which the Division calculated Applicant's Initial 2007 Lobster Management Area 2 Lobster Trap Allocation was presented by the Applicant himself.
5. The Applicant's Allocation determination was accomplished 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.*
6. The Applicant's Initial 2007 Area 2 Lobster Trap Allocation of two hundred fifty (250) traps was based upon Applicant's reported activity in the lobster fishery in the target period of the years 2001 through 2003 as reflected in the state-issued logbooks for those years that were completed and submitted to the Division by the Applicant.
7. The Marine Fisheries Regulations were adopted and the trap allocations determined pursuant to these regulations in order for the State of Rhode Island to come into compliance with Addendum VII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster as adopted by the Atlantic States Marine Fisheries Commission, and were intended to reduce the number of traps fished.

CONCLUSIONS OF LAW

After due consideration of the above findings of fact and the legal argument of the parties, I conclude the following as a matter of law:

1. The Administrative Adjudication for Environmental Matters (AAD) has jurisdiction over this matter pursuant to R.I. GEN. LAWS § 42-17.7-2; and § 15.14.2-5(a) of the Marine Fisheries Regulations
 2. The Division's Allocation of two hundred fifty (250) traps to the Applicant was calculated 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.*
 3. The Applicant failed to prove by a preponderance of the evidence that his requested increase of his Initial Lobster Management Area 2 Lobster Trap Allocation of two hundred fifty (250) traps would be consistent with the provisions and purposes of the Marine Fisheries Regulations.
 4. The Applicant's Initial Lobster Management Area 2 Lobster Trap Allocation of two hundred fifty (250) traps is the proper Allocation pursuant to the pertinent statutes and regulations.
- Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. Applicant's appeal of his 2007 Initial Lobster Management Area 2 Lobster Trap Allocation is DENIED.

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this _____ day of June, 2007.

Joseph F. Baffoni
Hearing Officer

Entered as a Final Agency Decision and Order this _____ day of June, 2007.

W. Michael Sullivan, Ph. D.
Director

APPENDIX

APPLICANT'S EXHIBITS:

APPLICANT 1 Applicant's College Resume (Marine Mechanics Institute)
FULL

APPLICANT 2 Grade School Year Book Picture and statement of Applicant
FULL

APPLICANT 3 Applicant's High School Resume
FULL

APPLICANT 4 State of Rhode Island 2002 Lobster Catch and Effort
FULL Logbook

APPLICANT 5 State of Rhode Island 2003 Lobster Catch and Effort
FULL Logbook

DIVISION'S EXHIBITS:

DIVISION 1 The Notice of Initial Area 2 Lobster Trap Allocation from the Division dated January 17, 2007 advising the Applicant that his initial 2007 allocation was determined by the Division. 3 Pages (Copy).

FULL

DIVISION 2 The Applicant's letter dated January 24, 2007 requesting a hearing concerning the Division's allocation Letter. 1 Page (Copy).

FULL

DIVISION 3 Curriculum vita of Mark Gibson. 5 Pages (Copy).

For Id

DIVISION 4 Curriculum vita of Thomas E. Angell. 2 Pages (Copy).

FULL

DIVISION 5 Curriculum vita of John M. Lake. 3 Pages (Copy).

For Id

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI general 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.