

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
RE: GOLINI, WILLIAM J., M.D.
AAD NO. 07-083/F&WA
LOBSTER TRAP ALLOCATION MPURP 000638
2008

DECISION AND ORDER

This matter came on to be heard before Hearing Officer David Kerins on the appeal of Dr. William J. Golini (“Dr. Golini” or “Applicant”) of the determination by the Department of Environmental Management, Division of Fish and Wildlife (“Division”) of his initial 2007 Area 2 Lobster Trap Allocation (“Allocation”). By letter dated January 17, 2007, the Applicant was notified that he was authorized an allocation of (0) traps based on the Applicant's activity in the lobster trap fishery during the target years of 2001 through 2003 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. Applicant requested a hearing by letter dated April 17, 2007. A status conference was held on May 24, 2007 and Applicant requested a hearing in December. On May 24, 2007 an Order was entered establishing a December 10, 2007 hearing date. On December 7, 2007 Applicant requested a continuance. By Order dated December 10, 2007 the prehearing and hearing was scheduled for January 16, 2008 at 1:30 p.m. The prehearing conference commenced on January 16, 2008. The Applicant appeared *pro se* and the Division was represented by Gary Powers, Esq.

EXHIBITS

At the prehearing conference, the following documents were submitted and marked as indicated below:

For Applicant:

App. 1 (Full) Hand written statement of Applicant dated January 16, 2008.

For Division of Fish and Wildlife:

Div. 1 (Full) The Division's Notice dated January 17, 2007 that the Applicant's Initial Area 2 Lobster Trap Allocation was determined to be (0). 1 Page (Original).

Div. 2 (Full) The Applicant's letter dated April 17, 2007 objecting to allocation and requesting a hearing. 1 Page (Copy).

Div 3 (Full) A summary of the Applicant's Lobster Landings and Trap Deployment Data relative to MPURP 000638 for the years 1999 through 2004 as reported to the Division and as prepared by Marine Biologist Thomas Angell on December 6, 2007. 1 Page (Copy).

Div. 4 (Full) *Curriculum vita* of Thomas E. Angell. 2 Pages (Copy).

Div. 5 (Full) Letter from Division to “All Rhode Island Commercial Fishing License Holders” dated December 18, 2000. 1 Page (Copy).

STIPULATED FACTS

The following stipulations of fact were agreed upon by the parties:

1. The Administrative Adjudication Division has subject mater jurisdiction over this action and personal jurisdiction over the Applicant.
2. The Applicant received a Notice of Initial Management Area 2 Lobster Trap Allocation from the Division dated January 17, 2007 advising the Applicant that his initial 2007 allocation was determined to be (0) traps based upon his reported activity in the lobster trap fishery in the target period of the years 2001through 2003.
3. The lobster trap allocation calculation was prepared on the basis of data concerning Applicant's history of participation in the lobster trap fishery during the years 2001 through 2003 as presented to the Department by the Applicant himself.
4. The Applicant submitted his April 17, 2007 request for hearing concerning the Notice of Initial Management Area 2 Lobster Trap Allocation from the Division in excess of the thirty (30) days of the date of receipt of Notice of Initial Management Area 2 Lobster Trap Allocation from the division authorized by R.I. Gen. Laws § 42-17.7-9.

WITNESSES

For Applicant

Dr. Golini testified regarding facts in support of his appeal.

For the Division of Fish and Wildlife

Thomas E. Angell, Principal Marine Biologist, Division of Fish and Wildlife (offered as a lay witness and as an expert witness concerning the lobster fishery as well as an expert witness concerning the interpretation and application of the Department's lobster regulations)•

1. He has had a full multipurpose license for many years and chose not to fish for conservation purposes. He feels that he should not be unreasonably punished for being a conservationist.
2. He questions the constitutionality of the “ruling” as being capricious and illogical.

ISSUES

Applicant identified the following issues prior to hearing:

1. He has had a full multipurpose license for many years and chose not to fish for conservation purposes. He feels that he should not be unreasonably punished for being a conservationist.
2. He questions the constitutionality of the “ruling” as being capricious and illogical.

Division identified the following issues:

1. The Applicant's failure to submit a request for an Administrative Adjudication Division hearing concerning the Applicant's initial lobster trap allocation within thirty (30) days deprives this Honorable Tribunal of subject matter to consider the subject appeal pursuant to the requirements of R.I. Gen. Laws § 42-17.7-9, thereby mandating dismissal of the instant matter.
2. The Applicant's initial lobster trap allocation 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.

HEARING SUMMARY

The Applicant, Dr. William J. Golini, testified on his own behalf. He testified that he had had a multi-purpose license for many, many years. He stated that he chose not to fish for lobster at some point because of his conservationist leanings and to support the commercial fishermen. He stated his feelings that conservationist should be rewarded rather than punished. He expressed

concern about the regulations in that they were onerous and had been done in a retroactive fashion without notice. He considers the regulations capricious, unfair and unconstitutional. The Applicant addressed the "lateness" issue in stating that he considered the language unclear and ambiguous. He felt that the State waived the issue. At the conclusion of his testimony Applicant rested.

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. Mr. Angell testified that he is responsible for reviewing data on file regarding individual fishing history for the purposes of determining the 2007 lobster trap allocation. Mr. Angell reviewed in his testimony the data contained in several exhibits.

Mr. Angell described Division #1 Full as a letter from the Division of Fish and Wildlife to William Golini dated January 17, 2007. This letter was further described as Mr. Galini's Notice of Lobster Trap Allocation. The exhibit indicates that the Applicant had no reported landings for the target period of 2001 - 2003 and that his Lobster Trap Allocation was Zero (0).

Division's Exhibit #3 was described as lobster landings and trap deployment data for William J. Golini, MPURP 000638 for 1999 through 2004. Mr. Angell testified as to the method of collection of the data and the interpretation of the information contained therein. In his testimony Mr. Angell stated that the fishing history reflected in MPURP 000638 for William J. Golini was 0 for the years 99, 01, 02, 03 and 04.

Mr. Angell also testified as to Division's #5. He described the exhibit as a letter from the Division of Fish and Wildlife to all Rhode Island Commercial Fishing License Holders. Upon the completion of Mr. Angell's testimony the Division rested.

ANALYSIS

The Division argues that it did not waive its objection to the timeliness of Applicant's appeal and that the appeal should be rejected on that basis. It is the opinion of this Hearing Officer that Applicant's appeal cannot prevail based on the substantive factual issues and therefore will not rule on the question of timeliness of appeal.

The Department of Environmental Management has the authority under Title 20 of the General Laws to enact regulations governing the commercial fishing industry in our state. As part of that broad authority, the Department is responsible for regulation of the lobster industry and associated licensing. The Regulations provide that DEM's Division of Fish and Wildlife shall be the lobster trap allocation authority for both state licensed and federally permitted Rhode Island residents. The Division is required to process Area 2 lobster trap allocation applications submitted by Rhode Island residents. Valid license or permit holders seeking a 2007 Area 2 Lobster Trap Allocation were required by Regulation 15.14.2-2(b) to make written application to the Division from November 12 - December 31, 2006. To be eligible for any Area 2 lobster trap allocation, Regulation 15.14.2-2(c) requires an applicant present documentation that he/she lawfully harvested lobsters employing lobster traps in Area 2 during the years 2001- 2003.

The Applicant in this matter submitted the required forms to the Division. The information provided to the Division from the Applicant's logbook indicates that he did not participate in the lobster fishery in any of the qualifying years. The Division accepted the information provided by Applicant and applied the standard regression formula adopted in the Regulations to determine the Applicant's Initial 2007 Area 2 Lobster Trap Allocation. The result of that standard calculation was that Applicant's allotment was reduced to Zero (0) traps.

The Regulations establish that the qualifying period for determining the 2007 Area 2 Lobster Trap Allocation is 2001 through 2003. Only two exceptions are enumerated in the Regulations which, if applicable, allow a departure from the 2001 - 2003 qualifying period. Those exceptions

involve military service and disabling physical or medical illness, neither of which is alleged by Applicant. The issue before the AAD in this matter is not one of regulatory interpretation. The Regulations are clear and unequivocal. It is a well established tenet of statutory construction that “when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Union village Development Associates v. Town of North Smithfield Zoning Board of Review, 738 A.2d 1084, 1086 (R.I. 1999) (quoting Providence & Worcester Railroad Co. v. Pine, 729 A.2d 202, 208 (R.I. 1999). If a statute is unambiguous and its words can be plainly interpreted, then the ‘work of judicial interpretation is at an end.’ “ Kelly v. Marcantonio, 678 A.2d 873, 877 (R.I. 1996) (quoting DeAngelis v. Rhode Island Ethics Commission, 656 A.2d 967, 969 (R.I. 1995). In the instant matter, the same rules of statutory construction are applicable to the Regulations. The Regulations concerning the qualifying years for computation of the 2007 Area 2 Lobster Trap Allocation are plain. The qualifying years are 2001 - 2003. The Division appropriately employed the data provided by Applicant and determined his allocation under the Regulations, to be Zero.

FINDINGS OF FACT

After consideration of the documentary and testimonial evidence presented I make the following findings of fact:

1. The Applicant is the holder of a commercial fishing license MP000638.
2. Applicant filed an application with RIDEM for a 2007 Initial Area 2 Lobster Trap Allotment determination.
3. The Applicant received notice of his 2007 Initial Area 2 Lobster Trap Allotment determination by letter dated January 17, 2007.
4. The lobster trap allocation dated January 17, 2007 was calculated on the basis of data concerning Applicant's history of participation in the lobster fishery during the years 2001 through 2003 as presented to the Department by the Applicant.
5. Applicant's Allotment for 2007 is Zero (0) traps.
6. Applicant filed a request for hearing with the Administrative Adjudication Division on April 17, 2007.
7. The Applicant reported no participation in the lobster fishery to the Department during the years 2001 through 2003.
8. The Applicant reported no landings of lobster to the Department during the year 2004.
9. Applicant disagrees with the Regulations as adopted.
10. The Regulations contain only two exceptions to the 2001 - 2003 qualifying years.
11. Applicant does not allege medical hardship or military service.

CONCLUSION 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 Zero (0) traps to the Applicant was calculated consistent with the requirements of Part 15.14.2 - Area 2 Lobster Trap Effort Control of the Marine Fisheries Regulations due to his lack of any documented fishing history.
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 Zero (0) traps would be consistent with the provisions and purposes of the Marine Fisheries Regulation.

4. The Applicant's Initial Lobster Management Area 2 Lobster Trap Allocation of Zero (0) 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 is DENIED.
2. Applicant's Initial Lobster Management Area 2 Lobster Trap Allocation shall remain at Zero (0) traps.

Entered as an Administrative Order this _____ day of February, 2008 and herewith recommended to the Director for issuance as a Final Agency Order.

David Kerins
Hearing Officer

Entered as a Final Agency Order this _____ day of _____, 2008

W. Michael Sullivan, PhD.
Director

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