

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

RE: VIEIRA, ANTONIO M.

AAD No. 00-014/MSA

**DECISION AND ORDER**

This matter is before the hearing officer on the appeal of Antonio Vieira ("Applicant") regarding the denial of a renewal of his commercial fishing license by the Office of Management Services. Mr. Vieira appeared pro se and the Office of Management Services was represented by Deborah George, Esq. The hearing was held on October 12, 2000 at the offices of the Administrative Adjudication Division for Environmental Matters, 235 Promenade Street, Providence, Rhode Island. The hearing was held pursuant to the Administrative Procedures Act, R. I. Gen. Laws §42-35-1 et seq. and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.

R.I. Gen. Laws §20-2-1.1, as amended by the General Assembly in its 2000 Session, reads in pertinent part:

**20-2-1.1. Commercial fishing license moratorium –** (a) . . . In order to obtain a license, applicable to these sections, between July 1, 2000 and June 30, 2001, an individual must provide proof that he/she possessed a valid Rhode Island commercial fishing license prior to July 1, 2000 and submit a license application to the department of environmental management prior to August 15, 2000. . . .

The burden of proof in this matter rests with the Applicant who must prove by a preponderance of the evidence that:

1. Applicant possessed a valid Rhode Island Commercial Fishing License prior to July 1, 2000; and
2. The one year moratorium is a hardship; and
3. The failure to apply on or before August 15, 2000 was due to circumstances beyond applicant's control

A brief prehearing conference was held immediately prior to the hearing. At that time the parties stipulated to the following facts:

1. Antonio Vieira held a commercial fishing license prior to July 1, 2000.
2. Antonio Vieira owns a boat that he uses for fishing purposes.

The parties agreed to the admission of the following documents:

MS 1 - Copy of License

MS 2 - Copy of Legal Notice

Mr. Vieira was sworn and testified on his own behalf. He indicated that commercial fishing makes up a portion of his income, somewhere between one thousand and three thousand dollars per year. Mr. Vieira uses this money to pay taxes and buy things for his four sons, three of whom live at home.

Under cross-examination Mr. Vieira testified that he is employed full time at Victory Finishing Company. He has not held a valid Rhode Island commercial fishing license since 1979. He has been supplementing his income over these intervening years by fishing under a valid Massachusetts license in that state's waters. Under questioning he stated that he could renew his Massachusetts license again this year but has not yet done so. He would prefer to fish in Rhode Island waters because his vehicle has been vandalized while fishing in Massachusetts.

Margaret McGrath testified under oath on behalf of the Office of Management Services. Ms. McGrath stated that The Department of Environmental Management published notice of the moratorium in the Providence Journal newspaper. The content of the notice is set forth in exhibit MS 2.

**FINDINGS OF FACT**

After consideration of the testimony and documentary evidence submitted at the hearing I find as fact the following:

1. Antonio Vieira owns a boat that he uses for fishing purposes.
2. Applicant did possess a valid Rhode Island commercial fishing license prior to July 1, 2000.
3. Applicant has not held a valid Rhode Island commercial fishing license since 1979.
4. Applicant has not fished in Rhode Island waters under a valid commercial fishing license since 1979.
5. Applicant applied for renewal of the license after August 15, 2000.
6. Applicant has fished in Massachusetts waters with a valid Massachusetts commercial fishing license for many years.
7. Commercial fishing supplements Applicant's income.
8. Applicant uses the money derived from commercial fishing to pay taxes and provide for his sons.
9. Applicant may renew his Massachusetts license during the period of the Rhode Island moratorium.

**CONCLUSIONS OF LAW**

Based on the evidence of record and consideration of the pertinent statutes and regulations I conclude the following as a matter of law:

The applicant failed to prove by a preponderance of the evidence that the one-year moratorium, at this time, constitutes a hardship.

Based on the conclusion of law above I need not reach the issue of whether the failure of Applicant to file a renewal on or before August 15, 2000 was due to circumstances beyond Applicant's control.

Based on the foregoing it is hereby

**ORDERED**

The appeal of Antonio Vieira for renewal of a commercial fishing license is  
**DENIED**.

Entered as a Recommended Decision and Order this 23<sup>rd</sup> day of October,  
2000.

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

Entered as a Final Agency Order this 25<sup>th</sup> day of October 2000.

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Jan H. Reitsma  
Director  
Department of Environmental Management  
235 Promenade Street, 4<sup>th</sup> 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 Antonio M. Vieira, 255 California Avenue, Providence, RI 02905; and via interoffice mail to: Deborah George, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this \_\_\_\_\_ day of October, 2000.

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