

Department of Environmental Management  
Administrative Adjudication Division  
State of Rhode Island  
RE: WALZ, RICHARD R.  
AAD No. 07-024/F&WA  
LOBSTER TRAP ALLOCATION #MPURP000579  
FEDERAL LOBSTER PERMIT #240357  
FEDERAL LOBSTER PERMIT #149292  
2008

## 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 determinations by the Department of Environmental Management, Division of Fish and Wildlife (Division) of the Initial 2007 RI/Area 2 Lobster Trap Allocation for his RI license and two federal permits: RI commercial fishing license #MPURP000579; Federal Lobster Permit #240357; and Federal Lobster Permit #149292. Applicant Richard R. Walz appeared on his own behalf. Gary Powers, Esq. appeared on behalf of the Division.

The hearing was conducted on June 20, 2007 immediately following the prehearing conference. After the conclusion of testimony, Applicant was granted until July 6, 2007 to provide any documentation regarding lobster trap landings for the year 2004. No information was submitted. 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 June 20, 2007. The parties did not agree to any stipulations of fact.

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

1. Whether the Applicant landed lobster by trap in 2004.

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

1. Whether the Applicant's initial lobster trap allocations were 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.
2. Whether the Applicant suffered a medical hardship during the target years of 2001-2003 as that term is set out in Part 15.14.2-5(d).
3. If the finding to the issue set out above in Issue 2 is in the affirmative, whether the Applicant landed any lobsters harvested by trap attributable to the license or permit under consideration as required by Part 15.14.2-5(e)(3) during 2004.
4. If the findings to the issues set out above in Issues 2 and 3 are both answered in the affirmative, Part 15.14.2-5(e)(3) will dictate that the degree to which the Applicant's Initial Lobster Trap Allocation may be modified will be the higher of the Applicant's participation in the lobster fishery in 1999 or 2000 which is attributable to the license or permit under consideration.

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

## HEARING SUMMARY

Three Notices of Initial 2007 RI/Area 2 Lobster Trap Allocation were issued by the Division to Richard Walz. The Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation for RI commercial fishing license #MPURP000579, dated January 16, 2007, assigned a zero (0) trap allocation. Div 1. The Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation for Federal Lobster Permit #240357, also dated January 16, 2007, assigned a zero (0) trap allocation. Div 2. The Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation for Federal Lobster Permit #149292, issued on January 17, 2007, assigned a zero (0) trap allocation. Div 3. Mr. Walz filed an appeal at the AAD on February 7, 2007. Div 4.

Applicant bears the burden of proving by a preponderance of the evidence that he is entitled to a modification of the Initial 2007 RI/Area 2 Lobster Trap Allocation for each of the federal permits and RI license.

The Applicant's only witness was himself. 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.

The Applicant testified that he has been fishing in the lobster fishery since 1991. He explained that he was unable to fish during the qualifying years, 2001 - 2003, due to a boating accident that occurred in 2002. Mr. Walz' lobster boat was broadsided by another vessel and the boat was destroyed. Although Mr. Walz' physical injuries were minor, he suffered from post traumatic stress disorder. The symptoms would occur whenever he was on the water and particularly when there was boat traffic. As a result he was advised by his doctors to stay off the water. Applicant presented several packages of exhibits to document the accident (Appl 2), the loss of fishing days at sea (Appl 3), the settlement for his injuries (Appl 4) and an explanation of his injuries (Appl 5). Among the documents in the latter exhibit are two notarized letters from individuals who treated Mr. Walz' anxiety and depression. In the letter dated April 16, 2007 Dr. W. Scott Keigwin stated that he has been Mr. Walz' personal physician since 2001 and diagnosed him initially with depression. He stated that the patient was referred to Deborah Jesdale, LICSW/LMHC for counseling. The doctor agreed with Ms. Jesdale's diagnosis that the patient had post traumatic stress disorder. It was the doctor's opinion that Mr. Walz was incapacitated from the summer of 2001 [sic] until the fall of 2003, "and is now recovered." Appl 5 at 15.

Ms. Jesdale's letter, dated March 16, 2007, states that Mr. Walz was treated at her office from July 20, 2002 through September 18, 2003. After three months of treatment, Mr. Walz was diagnosed with post traumatic stress disorder. It was her professional opinion that Mr. Walz was not capable of functioning at sea, nor was he capable of "managing the many responsibilities necessary to keep himself, his crew, and others safe, while at sea." Appl 5 at 13.

Mr. Walz stated that the summer before the accident was spent fixing his boat; after it was destroyed on July 19, 2002, a new vessel was built during 2002 - 2003. He testified that he returned to fishing in 2004. For the hearing the Division provided a summary of the 1999, 2000 and 2004 Lobster Landings and Trap Deployment Data for Mr. Walz' multipurpose fishing license and two federal permits. Div 5. Mr. Walz stated that he had 12 to 15 years of "lobstering history" but that he was "not in a position to dispute" the 1999 - 2000 data set forth in the Division's exhibit.

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

In the Division's presentation of its case, Thomas Angell testified that among his responsibilities as a Principal Marine Fisheries Biologist are research and monitoring the lobster resource. As a member of the Lobster Technical Committee of the Atlantic States Marine Fisheries Commission

(ASMFC), he provided information on the Rhode Island lobster fishery for lobster stock assessments. Stock assessment reports from 1996, 2000 and 2006 concluded that the Area 2 lobster resource, and southern New England's, were overfished. Over the years several management initiatives were undertaken to encourage the re-building of the resource: increasing the minimum size of a legal lobster; increasing escape vent size; placing restrictions on non-trap lobster fishermen; and developing an effort control plan, also referred to as *Addendum VII*, for Area 2.

Mr. Angell explained that Area 2 encompasses the waters from the Rhode Island/Connecticut border on the west, extending out 40 miles, and runs easterly to southeastern Massachusetts and Nantucket; the area includes all of Rhode Island state waters. According to the witness, *Addendum VII*'s goal is to limit the number of lobster traps fished in Area 2 to the number of traps that were fished in 2003. The plan capped the number of traps to be used in Area 2 at 220,000.

Mr. Angell testified that if a state does not comply with the *Addendum VII* effort control plan, then the ASMFC will make an out-of-compliance finding and forward the finding to the United States Secretary of Commerce and the Secretary of the Interior. Those officers could then begin the process of shutting down the lobster fishery in the offending state through the imposition of a moratorium on the fishery.

Mr. Angell also serves as staff coordinator on the Lobster Advisory Panel of the Rhode Island Marine Fisheries Council. In that capacity he handles all matters that affect the lobster resource, including making recommendations for implementation of management plans and drafting regulatory language. He stated that he took all of the required elements of the *Addendum VII* management plan and drafted the regulations. Once the regulations were adopted, he and colleague John Lake compiled data to determine each lobsterman's lobster trap allocation.

The witness explained that the three lobster trap allocations issued to Mr. Walz employed the same criteria, whether they were federal or state permits/licenses. The Notice of Initial Area 2 Lobster Trap Allocation for RI commercial fishing license #MPURP000579 allowed zero (0) traps because there was no record of any landings by trap or reports of traps fished for the years 2001 - 2003. Div 1. The Notice of Initial Area 2 Lobster Trap Allocation for NMFS Federal Lobster Permit #240357, which was also calculated through the use of historic participation in the lobster fishery, allowed zero (0) traps. Div 2. Again, there had been no record of pounds landed with traps for 2001 - 2003 and no reports of traps fished for those years. The Notice of Initial Area 2 Lobster Trap Allocation for NMFS Federal Lobster Permit #149292 also allowed zero (0) traps for the same reason. Div 3.

Mr. Angell stated that he had also considered whether Applicant could benefit from a recalculation due to medical hardship. He had compiled data from 1999, 2000 and 2004 for the two federal permits and the state license; the data is set forth in Division's exhibit 5. He stated that if an applicant claimed a military or medical hardship and wanted to substitute landings from 1999 - 2000 for a recalculation, then the applicant must have had landings by trap in 2004 in order to do so. The 2004 data for the state multipurpose license showed no lobster landed by trap and no reported traps fished; data for Federal Lobster Permit #149292 showed there were some landings but they were by non-trap gear (specifically, by gill net). Although the witness stated that all of the 2004 landings for Federal Lobster Permit #240357 were from non-trap gear (specifically, by gill net or fish pot), the exhibit he prepared shows 100 reported traps fished for 2004.

Under cross examination Mr. Angell explained that landings by non-trap gear could not be used in determining an allocation because *Addendum VII* was a trap effort control plan. When questioned about the data for Federal Lobster Permit #240357, the witness stated that the landings had all been reported as by gill net but he had compiled the document and it listed 100 reported traps for 2004. In his cross examination testimony he had no explanation for the inconsistency. The witness was again questioned by Division's counsel in redirect examination. The number of reported traps for 2004 was generated from Applicant's federal Vessel Trip Report or from his RI

Lobster Catch and Effort Logbook. A regression formula was used to determine a normal catch per trap based upon the reported traps fished and then compared to a predicted number of traps based upon the reported landings of lobster. In any discrepancy between the two numbers (reported trap v. predicted trap), the lesser of the two numbers became the “effective” traps fished. He stated that the regression formula does not apply to 2004, yet also testified that since there were no pounds landed by trap in 2004 for Federal Lobster Permit #240357, the predicted number of traps would be zero. Since that would be the lesser of the two numbers (100 reported traps v. 0 predicted), the “effective” traps fished would also be zero.

The Division then rested its case.

Applicant chose not to present a closing argument. In the Division's closing argument, counsel stated that the primary issue was whether there had been any landings by trap for any of the permits or license for the year 2004. The Division urged that the Lobster Trap Allocations for the two federal permits and for the state license remain as issued by the Division.

Applicant was granted until July 6, 2007 to submit any documentation regarding landings by trap for the year 2004. None has been submitted.

## Conclusion

Although the Division has applied the provisions of the *Marine Fisheries Regulations* as adopted on November 22, 2006 to all of the lobster trap allocation appeals to date, the Director in his 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*<sup>1</sup> “were promulgated with the intent that they be in place prior to making any final decisions on appeals.” at 2. I therefore am applying to Mr. Walz' appeal the provisions of the most recent *Marine Fisheries Regulations*, as they were amended on August 1, 2007.

The Division presented evidence that Applicant had no pounds landed and no reported traps fished for the years 2001, 2002 and 2003 for all three (3) of his license/permits. Div. at 1; Div. 2 at 1; Div. 3 at 1. The Division also presented evidence regarding Applicant's lobster trap fishing history for the years 1999 and 2000. Div. 5. There were no pounds landed and no reported traps fished during those years attributed to RI commercial fishing license #MPURP000579. The two (2) federal permits, however, show a lobster trap fishing performance for 1999 and 2000 that may increase the Lobster Trap Allocation to 554 traps for Federal Lobster Permit #240357, and to 405 traps for Federal Lobster Permit #149292.<sup>2</sup> Applicant seeks to have this lobster trap fishing history for 1999 - 2000 substituted for the lack of such history during the target years 2001 - 2003.

Applicant's request first raises the issue of whether the Applicant has proven that he has met the definition of “material incapacitation” in order to employ the 1999 - 2000 data for a modification of the lobster trap allocations. Even if Applicant has done so, the Division contends that he cannot fulfill a second regulatory requirement: proving that the Applicant landed lobster by trap in 2004. The amendments that were adopted after the November 22, 2006 regulations are pivotal in my consideration of Applicant's request that the 1999 - 2000 lobster landing data be used to modify the lobster trap allocations because both sets of the newer regulations relaxed (slightly) the onerous requirements to prove medical hardship<sup>3</sup>. The amendments now require proof of “material incapacitation” and, as discussed below, altered the requirement for landings by trap in 2004. The pertinent provisions of the *Marine Fisheries Regulations* are set forth below.

Part 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. Part 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) \*\*\*

From the above definition material incapacitation certainly contemplates medical and military situations, but also includes “a verifiable event beyond the control of the license/permit holder”. Although Mr. Walz had stated that the summer months of 2001 were spent fixing his boat, there was no evidence whether the repairs were made by choice or by necessity. The July 19, 2002 destruction of his vessel, Mr. Walz' near-death experience and documented post traumatic stress disorder covered half of the three-year period used to calculate the Lobster Trap Allocations. The adverse impact on Mr. Walz' fishing history for that period was substantial. His treatment continued until September 18, 2003, although even then he continued to complain of episodes of anxiety. Appl 5 at 12. He testified that he only returned to fishing in 2004.

If the three-year period was viewed as a whole, then the event of July 19, 2002 and its aftermath certainly constituted a material incapacitation, since the incident devastated Mr. Walz' fishing performance for half of the pertinent period. But the standard is not that the period be viewed as a whole; rather, the material incapacitation must have adversely affected the fishing performance for the entire three-year period. “Applicant's fishing performance during the three year period 2001 - 2003 must have been impacted for the full three year period.” *Re: Charles Borden*, AAD No. 07-028/F&WA, Final Agency Order entered on December 31, 2007, conclusion of law #5. As a consequence of this interpretation of the definition and application of “material incapacitation”, the Applicant has failed to prove that he suffered a material incapacitation for the period 2001 - 2003 whereby his fishing performance from 1999 and/or 2000 could be used for an alternative calculation of his Lobster Trap Allocations.

Interestingly, if Mr. Walz had been able to prove material incapacitation, it appears that the amended regulations no longer require an applicant to have had landings by trap in 2004 in order to apply the fishing history from 1999 and/or 2000 for an alternative Lobster Trap Allocation. Part 15.14.2-8(a) requires that the applicant who is claiming the material incapacitation meet the criteria set forth in sections 15.14.2-6(a) (i) and (iii), as set forth below:

15.14.2-6 -- Qualifications for Initial Area 2 LTAs

(a) To be eligible for an initial Area 2 LTA, an applicant:

(i) Must have held a Department-issued commercial fishing license, authorizing the individual to fish commercially for lobster, or a federal lobster permit endorsed for Area 2, at some point during the period 2001 - 2003; and/or

(ii) \*\*\*

(iii) Must have renewed his/her license/permit annually since 2003.

Under the November 22, 2006 regulations, section 15.14.2-5(e)(3) had required that if the applicant claimed a medical or military hardship and sought the alternative calculation, then he/she had to have landed lobsters with traps during 2004 in order to use the landings from 1999 - 2000. The April 11, 2007 regulations amended that requirement: the individual claiming material incapacitation need not comply with section 15.14.2-6(a) (ii) which now contains the provision to have landed lobsters by trap in 2004. Since the August 1, 2007 regulations also no longer require Mr. Walz to have landed lobsters by trap in 2004, the Department could not deny him the alternative calculation due solely to the lack of landings by trap in 2004.

Based upon the testimony and documentary evidence presented at the hearing, I conclude, however, that Mr. Walz has not proven he had no documented fishing performance for the three-year period 2001 - 2003, inclusive, due to material incapacitation as defined by the August 1, 2007 regulations and as interpreted by the Director in *Re: Charles Borden*, AAD No. 07-028/F&WA, Final Agency Order entered on December 31, 2007. Applicant has failed to prove that he is entitled to a re-calculation of the Initial 2007 RI/Area 2 Lobster Trap Allocation for each permit and license.

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

### **FINDINGS OF FACT**

1. The Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to Applicant for RI commercial fishing license #MPURP000579 allowed zero (0) traps based upon his reported activity in the lobster fishery in the target period of the years 2001 through 2003.
2. The Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to Applicant for Federal Lobster Permit #240357 allowed zero (0) traps based upon his reported activity in the lobster fishery in the target period of the years 2001 through 2003.
3. The Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to Applicant for Federal Lobster Permit #149292 allowed zero (0) traps based upon his reported activity in the lobster fishery in the target period of the years 2001 through 2003.
4. Applicant filed a request for hearing at the Administrative Adjudication Division on February 7, 2007.
5. Applicant conducted repairs on his boat during the summer months of 2001 and did not land lobster by trap in 2001.
6. Applicant did not present any evidence that the 2001 boat repairs were necessitated by an event beyond his control.
7. Applicant was in a serious boating accident on July 19, 2002 that destroyed his vessel.
8. As a result of the accident that occurred on July 19, 2002, Applicant suffered from post traumatic stress disorder and was unable to fish until 2004.
9. Applicant provided notarized documentation of his diagnosis and treatment for post traumatic stress disorder from July 2002 through September 18, 2003.
10. Applicant resumed fishing in 2004 but provided no evidence of lobster landings for 2004.
11. The Division provided evidence of Applicant's lobster landings for the years 1999 and 2000.

### **CONCLUSIONS OF LAW**

After due consideration of the documentary and testimonial 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. 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.

3. The *Marine Fisheries Regulations*, as amended August 1, 2007, apply to the final decision in this matter.
  4. Pursuant to the provisions of Part 15.14.2-8 (a) of the August 1, 2007 *Marine Fisheries Regulations*, an applicant who is claiming a material incapacitation is no longer required to have landed lobsters with traps from Area 2 during the year 2004.
  5. Pursuant to Part 15.14.2-2 of the August 1, 2007 *Marine Fisheries Regulations* "Material Incapacitation" means 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.
  6. The Director has interpreted "Material Incapacitation" to require that Applicant's fishing performance during the three-year period 2001 - 2003 must have been impacted for the full three-year period.
  7. Applicant has failed to prove by a preponderance of the evidence that the July 19, 2002 boating accident and the documented post traumatic stress disorder constitutes a material incapacitation.
  8. 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 his RI commercial fishing license or for the two (2) Federal Lobster Permits.
- Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

### **ORDERED**

1. Applicant's request for a modification of the Initial 2007 RI/Area 2 Lobster Trap Allocation for his RI commercial fishing license and for the two (2) Federal Lobster Permits is DENIED.
2. The Initial 2007 RI/Area 2 Lobster Trap Allocation for RI Commercial License # MPURP000579 shall remain at zero (0) traps.
3. The Initial 2007 RI/Area 2 Lobster Trap Allocation for Federal Lobster Permit #240357 shall remain at zero (0) traps.
4. The Initial 2007 RI/Area 2 Lobster Trap Allocation for Federal Lobster Permit #149292 shall remain at zero (0) traps.

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

Mary F. McMahon  
Hearing Officer

Entered as a Final Agency Decision and Order this \_\_\_\_\_ day of \_\_\_\_\_, 2008.  
W. Michael Sullivan Ph.D.  
Director

### **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 Documents regarding Richard R. Walz; his boats, licenses and permits

Full

Appl 2 Documents regarding the July 19, 2002 boating accident

Full

Appl 3 Documents regarding loss of fishing time

Full

Appl 4 Documents regarding settlement for personal injuries

Full

Appl 5 Documents regarding personal injuries and medical treatment 2002-2003

Full

Appl 6 Lobster Qualification, 1991

for Id

Appl 7 Lobster Boat, 2001

for Id

Appl 8 New vessel built 2002-2003

for Id

Appl 9 Lobster history, 1999-2000

for Id

## **DIVISION OF FISH AND WILDLIFE'S EXHIBITS**

Div 1 Copy of Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to Richard Walz for RI Commercial License #MPURP000579.

Full

Div 2 Copy of Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to Richard Walz for Federal Lobster Permit #240357.

Full

Div 3 Copy of Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to Richard Walz for Federal Lobster Permit #149292.

Full

Div 4 Copy of Applicant's hearing request dated February 2, 2007.

Full

Div 5 Computer printout summarizing the history of Applicant's participation in the lobster Fullfishery during the period 1999, 2000 and 2004 for RI Commercial License #MPURP000579, Federal Lobster Permit #240357 and Federal Lobster Permit #149292.

Div 6 Curriculum vita of Thomas E. Angell.

Full

## **Footnotes**

1

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).

2

The calculation was made in accordance with the formula used by the Division (*See* Div. 1 at 1; Div. 2 at 1; and Div. 3 at 1) and as set forth in Part 15.14.2-9 of the *Marine Fisheries Regulations*.

3

Part 15.14.2-5 (d) of the November 22, 2006 *Marine Fisheries Regulations* required that the Applicant establish a medical or military service hardship in the years 2001 - 2003 in order to employ the 1999 - 2000 lobster trap data