

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

RE: BOOTH, DAVID

AAD NO.07-072/F&WA

LOBSTER TRAP ALLOCATION FEDERAL PERMIT 330436

FINAL ORDER OF DISMISSAL

This matter came before Hearing Officer Mary F. McMahon on June 13, 2007 for prehearing conference and hearing. Attorney Gary Powers appeared on behalf of the Division of Fish and Wildlife (Division). Applicant David Booth failed to appear or otherwise inform the Hearing Officer of his inability to appear at the prehearing conference and hearing scheduled to commence at 1:30 p.m. The Division moved for entry of a Conditional Order of Dismissal and requested that payment of the stenographic costs be imposed as a condition for vacating the Conditional Order of Dismissal. The motion was granted.

At approximately 3:50 p.m. Mrs. Booth telephoned the AAD Clerk and stated that Applicant had missed the prehearing conference and hearing because he had failed to check his calendar.

The Conditional Order of Dismissal was entered on June 26, 2007 and required Applicant to explain in writing his failure to appear; allowed the Division the opportunity to object; and imposed the condition of payment of the stenographic costs in order to return the matter to the hearing schedule.

Applicant has not responded to the Conditional Order of Dismissal.

FINDINGS OF FACT:

A review of the AAD file reveals the following:

**RE: BOOTH, DAVID**

**AAD NO.07-072/F&WA**

**LOBSTER TRAP ALLOCATION FEDERAL PERMIT**

1. The Order and Notice of Administrative Hearing & Prehearing Conference issued to the parties on April 5, 2007 provided that: "If a party fails to appear at the hearing, the Hearing Officer will issue a seven (7) day Conditional Order of Dismissal/Default against the absent party which shall automatically become final unless the absent party demonstrates good cause for the failure to appear."
2. The prehearing conference and hearing were scheduled for June 18, 2007 and subsequently rescheduled to June 13, 2007.
3. Attorney Gary Powers appeared on behalf of the Division of Fish and Wildlife on June 13, 2007.
4. Applicant David Booth failed to appear at the prehearing conference and hearing on June 13, 2007.
5. A Conditional Order of Dismissal was entered against the Applicant on June 26, 2007.
6. Pursuant to the Conditional Order, the Applicant had until and including July 5, 2007 to show good cause why a Final Order of Dismissal should not be entered for Applicant's failure to appear at the prehearing conference and hearing.
7. As of the date of this Administrative Order, the Applicant has not responded to the Conditional Order of Dismissal.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, I conclude the following as a matter of law:

1. Applicant David Booth has failed to show good cause why a Final Order of Dismissal should not be entered against him for his failure to appear at the prehearing conference and hearing.
2. Applicant David Booth is deemed to have waived his right to an adjudicatory hearing on the Lobster Trap Allocation determined by the Division of Fish and Wildlife.

Wherefore, it is hereby

RE: BOOTH, DAVID  
LOBSTER TRAP ALLOCATION FEDERAL PERMIT

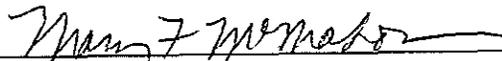
AAD NO.07-072/F&WA

ORDERED

1. Applicant's request for hearing on the Lobster Trap Allocation is herewith DISMISSED.

Entered as an Administrative Order this 22<sup>nd</sup> day of August, 2007

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

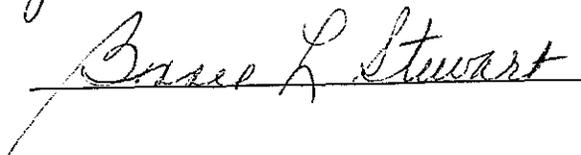
Entered as a Final Agency Order this 22<sup>nd</sup> day of August, 2007.



W. Michael Sullivan, Ph.D., 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 Final Order of Dismissal to be forwarded, via regular mail, postage prepaid to: David Booth, 1144A Curtis Corner Road, Wakefield, RI 02879; via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 23<sup>rd</sup> day of August, 2007.



RE: BOOTH, DAVID  
LOBSTER TRAP ALLOCATION FEDERAL PERMIT

AAD NO.07-072/F&WA

**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.