

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
Re: John Major
AAD NO.07-088/F&WA
Lobster Trap Allocation MPURP 000034
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 determination by the Department of Environmental Management, Division of Fish and Wildlife (Division) of the Initial 2007 RI/Area 2 Lobster Trap Allocation for Applicant's RI commercial fishing license #MPURP000034. Applicant John Major appeared on his own behalf. Gary Powers, Esq. represented the Division.

The hearing was conducted on May 12, 2008 immediately following the prehearing conference. The adjudicatory 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

At the prehearing conference the parties agreed to the following stipulations of fact:

1. John Major has held a commercial fishing license continuously for 36 years and currently holds a multipurpose commercial fishing license.
2. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
3. The Applicant did not land any lobsters harvested by trap during 2004.

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

1. Whether the material incapacitation in 2001 - 2003 continued through 2004, preventing lobster landings 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 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.
2. Whether the Applicant is able to satisfy the Hearing Officer that he suffered a medical hardship throughout the target years of 2001-2003 as required in Part 15.14.2-8.
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 during 2004 as required by Part 15.14.2-6(ii).
4. If the findings to the issues set out above in Issues 2 and 3 are both in the affirmative, whether the Applicant participated in lobster fishery in 1999 or 2000 as required Part

15.14.2-6(ii) and whether the degree of the Applicant's participation will permit a modification in the Initial Lobster Trap Allocation which is the subject of this appeal. A list of the exhibits that were presented by the parties is attached to this Decision as Appendix A.

HEARING SUMMARY

The Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to John Major for RI commercial fishing license #MPURP000034, dated May 15, 2007, assigned a zero (0) trap allocation. Div 1. Mr. Major filed an appeal at the AAD on June 11, 2007. Div 2.

The hearing was conducted immediately following the prehearing conference on May 12, 2008. 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 pursuant to section 15.14.2-8 of the *Marine Fisheries Regulations*.

The Applicant's only witness was himself. John Major testified that during the years 2001 through 2003 he was unable to participate in the lobster fishery due to severe depression that included suicidal thoughts and to back problems that required two surgeries. He has suffered from the injuries and depression for the last seven years but is now feeling better and ready to participate in the lobster fishery. Applicant provided a notarized letter from Thomas J. Paolino, Jr., M.D. which states: "During the time of 2001 - 2006 [Mr. Major's] depression rendered him totally disabled in the lobster fisherman business. He also suffered from severe back pain which made his depression worse." Appl 1.

The witness stated that he has held a fishing license every year since he was fifteen years (15) old and he is fifty-one (51) now.

The Division waived cross-examination of the witness. Applicant then rested his case. In the Division's opening statement counsel agreed that the Applicant appeared to have been materially incapacitated from 2001 through 2003 but contended that Applicant was unable to satisfy the medical hardship exception because he had no lobster landings in 2004. Due to the lack of 2004 landings, Applicant could not employ landings data from 1999 - 2000.

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. Thomas Angell testified that his principal duties included research and monitoring the lobster resource. As a member of the Lobster Technical Committee of the Atlantic States Marine Fisheries Commission (ASMFC), he collected and compiled data for lobster stock assessments.

Stock assessments were made in 1996, 2000 and 2006 and concluded that the Area 2 lobster resource, and southern New England's, were overfished. As a result of the reports' conclusions, management initiatives were undertaken to encourage the re-building of the resource: increasing the minimum size of a legal lobster; increasing escape vent size; and placing restrictions on non-trap lobster fishermen. With the issuance of the 2006 assessment, an effort control plan, also referred to as *Addendum VII*, was developed to control the number of traps fished. Mr. Angell testified that if a state does not implement the ASMFC-mandated effort control plan, then the United States Secretary of Commerce and the Secretary of the Interior could find the state "out of compliance". Those officers could then begin the imposition of a moratorium on the lobster fishery.

Mr. Angell stated that he took the provisions of the ASMFC *Addendum VII* and drafted Rhode Island's *Marine Fisheries Regulations* section 15.14.2. In his testimony he summarized the provisions of *Addendum VII*: the purpose of the effort control plan is to reduce the lobster

mortality rate to allow the resource to rebuild; the plan imposes lobster trap allocations; the allocations are based on each fisherman's history of participation in the lobster fishery during the years 2001 through 2003. 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, approximately 200,000 - 225,000.

Once the regulations were adopted, he and colleague John Lake compiled data to determine each lobsterman's lobster trap allocation. They used a formula that employed an individual's number of reported traps fished for 2001, 2002 and 2003 and the number of pounds landed for those years, and calculated from the latter data the predicted traps fished. The Initial Lobster Trap Allocation was the lesser of the two numbers (reported traps vs. predicted traps). The data the two men reviewed was culled from each fisherman's Catch and Effort Logbook or Federal Vessel Trip Report. In this matter Mr. Major had no reported traps fished and no pounds landed for 2001 through 2003, resulting in an Initial Lobster Trap Allocation of zero. Div 1 at 1.

Mr. Angell reviewed the information he had compiled regarding Mr. Major's lobster fishing history for the years 1999 through 2004. Div 3. Applicant had reported traps fished and lobster landings for 1999 and 2000, but none for 2001 through 2004. He stated that it was a regulatory requirement that an applicant have landings in 2004 in order to employ 1999 and 2000 data for an alternative calculation of the allocation. The witness asserted that even if this Applicant was materially incapacitated for the period 2001 through 2003, he was not eligible to use the earlier, favorable data for an alternative calculation because he did not have any lobster landings in 2004.

Under cross examination Mr. Angell explained that amendments to the *Marine Fisheries Regulations* were filed with the Rhode Island Secretary of State on April 11, 2007, effective May 1, 2007.

The amendments had inadvertently deleted the requirement for 2004 lobster landings. A "Technical Revision"¹ was filed with the Secretary of State in February 2008 to include the requirement for 2004 lobster landings. He stated that the "Technical Revision" was retroactive to the April 11/May 1st dates.

Upon further questioning by the Applicant, Mr. Angell conceded that the Applicant may have been able to use the 1999 - 2000 data if the "Technical Revision" had not been effective. He tentatively identified the drafter of the "Technical Revision" as a former employee in the DEM Office of Legal Services; he speculated that the Director had approved the filing of the "Technical Revision."

In redirect examination Division's counsel elicited from the witness that the initial regulations implementing the effort control plan had included the requirement for lobster landings by trap in 2004 in order to employ the 1999 and 2000 data. The April 2007 amended regulations omitted the requirement; the February 2008 "Technical Revision" restored the requirement. The witness stated that he believed the 2004 landings requirement was set forth in *Addendum VII*².

In final questioning by the Applicant, Mr. Angell stated that one applicant, through an AAD decision that was adopted as a Final Agency Order, received a higher allocation based upon 1999 - 2000 data when he did not have 2004 lobster landings³.

The Division then rested its case.

In Applicant's closing argument he assailed the reinstatement of the 2004 landing requirement that "all of a sudden" appeared. He stated that he had always had the fishing license, renewed it every year, and made his livelihood from the water.

In the Division's closing argument, counsel conceded that the Applicant appeared to have suffered a medical hardship from 2001 through 2003 but asserted that he must meet all of the requirements to substitute the 1999 - 2000 data for a new allocation. The hurdle

remained the 2004 lobster landings required by section 15.14.2-6 of the *Marine Fisheries Regulations*. Counsel requested that the Hearing Officer take Administrative Notice that section 15.14.2 of the *Marine Fisheries Regulations*, as promulgated in November 2006, contained the 2004 landings requirement. Counsel stated that there was a determination that the April 2007 amendments did not meet the intended requirements, so the "Technical Revision" was filed retroactive to the April amendments. He asserted that the Division had been consistently applying the 2004 requirement and corrected the regulations when it became aware of the inadvertent error.

Analysis and Conclusion

This hearing presented a credible Applicant who has suffered debilitating mental and physical hardship for the years 2001 through 2003 and extending through 2006. He had lobster landings for 1999 and 2000 which would have resulted in a revised Lobster Trap Allocation of 450 traps⁴. The Division contends that the 1999 and 2000 data cannot be used for an alternative calculation, however, because the "Technical Revision" restored the requirement for lobster landings in 2004⁵, with which the Applicant cannot comply. Applicant has challenged the fairness of applying such a "rule" without notice (that is, the requirement appeared "all of a sudden.>").

Prior to the filing of the "Technical Revision" section 15.14.2-6 (a) provided as follows:

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) Must have documented fishing performance during the period 2001 - 2003, i.e., must have landed lobsters with traps from Area 2 at some point during that period; or if unable to do so due to material incapacitation, pursuant to the provisions set forth in section 15.14.2-8, must have documented fishing performance during the period 1999 - 2000 and during the year 2004, i.e., must have landed lobsters with traps from Area 2, with a valid license/permit, at some point during those periods; and
- (iii) Must have renewed his/her license/permit annually since 2003.

Section 15.14.2-8 (a) contained the following language:

(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.

The simple modification that restored the 2004 landings requirement appears "technical" on its face because the one page document filed with the Rhode Island Secretary of State modifies section 15.14.2-6 (a) (i) by changing "and/or" to "and" and alters section 15.14.2-8 (a) by deleting "(i) and (iii)". By characterizing the filing as a technical revision the changes became retroactive and avoided the usual notice requirements for promulgating regulations that are set forth in the *Administrative Procedures Act*, and specifically in R.I. Gen. Laws § 42-35-3.

The procedure for adoption, amendment or repeal of any agency rule that is set forth in § 42-35-3 (a) requires notice and reasonable opportunity for comment. Subsection (c) provides that "[n]o rule hereafter adopted is valid unless adopted in substantial compliance with this section..." The question is: Is the imposition of the 2004 landings requirement

properly considered a technical revision for which notice and comment are not required, or is it a rule that must comply with the requirements of § 42-35-3 to be valid...

The *Administrative Procedures Act* does not specifically address technical revisions of agency rules or regulations. The Secretary of State, although it accepts filings identified as technical revisions, does not define or limit what constitutes a technical revision. The Department of Environmental Management, in its guidance document on Public Notice and Rulemaking Procedures, also does not identify what constitutes a technical revision. The parameters of an allowed technical revision must therefore be gleaned from the manner in which the *Administrative Procedures Act* defines a Rule: if the filing contains changes to an agency's rules or regulations that fall short of being a Rule, then it need not comply with § 42-35-3 to be valid.

R.I. Gen. Laws § 42-35-1 sets forth the definitions used in the *Administrative Procedures Act*. "Rule" is defined to mean:

[E]ach agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include: (1) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, or (2) declaratory rulings issued pursuant to § 42-35-8, (3) intra-agency memoranda, or (4) an order.

In a section dealing with the refiling of rules and regulations (required every five (5) years commencing in January 2007⁶), the *Administrative Procedures Act* provides that a refiling that changes the format of existing rules but includes no substantive change does not constitute rule-making action by the agency. R.I. Gen. Laws § 42-35-4.1 (f). In light of the above provisions, I conclude that a technical revision is one that involves formatting or editing or a similar nonsubstantive change to the rule. If the filing at the Secretary of State is one of general applicability that implements, interprets or prescribes law or policy, including a filing that changes the meaning of an existing rule, then it is not a technical revision.

Twenty-one days prior to the filing of the "Technical Revision" on February 15, 2008 the rule in question was interpreted in a matter that was before the AAD:

The applicable Regulations require that an Applicant meet the qualifying criteria set forth in sections 15.14.2-6 (a) (i) and (iii) (footnote omitted), and thereafter meet the definition of material incapacitation as mandated by the subsequent regulatory language. The requirement that the Applicant land lobsters in 2004 is contained in Section 15.14.2-6 (a) (ii) which is not part of what Applicant is required to demonstrate under Part 15.14.2-8 (a) of the Regulations. *The fact that Applicant did not land lobsters in 2004 is irrelevant under Part 15.14.2-8 (a) of the Regulations to a recalculation of an Applicant's Allocation based on material incapacitation.* In Re: James H. Low, AAD No. 07-059/F&WA, Final Agency Order entered on January 25, 2008 at 7. (emphasis added)

As a result of the above interpretation, and upon confirmation that the Applicant had held the needed licenses, James Low's Initial 2007 Area 2 Lobster Trap Allocation of twenty (20) traps was to be recalculated based upon his fishing performance in the years 1999 and 2000. In Re: James H. Low, Amended Decision and Order, with attached Interoffice Memorandum, entered on April 5, 2008, at Memorandum.

Mr. Major presents similar facts: notarized documentation establishing material incapacitation on the basis of a medical condition; no documented fishing performance during the three - year period 2001 - 2003 due to material incapacitation; fishing performance in Area 2 during the period 1999 - 2000 that would substantially increase his allocation of traps; and the absence of lobster landings by trap during 2004. But for the

“Technical Revision”, Mr. Major should be entitled to the same outcome as Mr. Low in this adjudicatory proceeding.

With the filing of the “Technical Revision”, the Department added to the qualifying criteria for an applicant to obtain an alternative calculation: the applicant must have landed lobster with traps during 2004. This new requirement is one of general applicability that changes the meaning of Part 15.14.2-6(a) and Part 15.14.2-8(a) of the *Marine Fisheries Regulations* as they were interpreted in the Low Decision. The filing at the Secretary of State on February 15, 2008 was made in response to the Low Decision and was clearly intended to change the meaning of an existing rule.

Adding a new requirement to qualifying criteria is not a technical revision under the *Administrative Procedures Act*; it is rule-making. The 2004 lobster landings requirement is invalid because it was not adopted in substantial compliance with § 42-35-3. Mr. Major is therefore entitled to a recalculation of the Initial 2007 RI/Area 2 Lobster Trap Allocation for RI Commercial License #MPURP000034 based upon his lobster landings for 1999 and 2000. 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 #MPURP000034 allowed zero (0) traps based upon his reported activity in the lobster fishery in the target period of the years 2001 through 2003.
2. Applicant filed a request for hearing at the Administrative Adjudication Division on June 11, 2007.
3. Applicant has held a commercial fishing license continuously for 36 years and currently holds a multipurpose license.
4. Due to severe depression and back problems that required two surgeries, Applicant was totally disabled in the lobster fisherman business during the period 2001 through 2003.
5. Applicant provided notarized documentation from Thomas J. Paolino, Jr., M.D. regarding his physical and mental condition during the period 2001 through 2006.
6. The Division presented evidence that Applicant had 450 Effective Traps Fished in 1999 and 379 Effective Traps Fished in 2000.
7. Applicant did not land any lobsters harvested by trap during 2004.
8. On February 15, 2008 the Department of Environmental Management filed a document with the Rhode Island Secretary of State that made changes in Part 15.14.2-6 and Part 15.14.2-8 of the *Marine Fisheries Regulations*; identified the changes as a technical revision; stated that the August 1, 2007 amendments to the *Marine Fisheries Regulations* did not concern lobsters or the lobster trap effort control program; and made the two changes retroactive to the *Marine Fisheries Regulations* as amended April 11, 2007.

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, did not contain a requirement for an applicant to have landed lobsters with traps during 2004 as qualifying criteria for an applicant to obtain an alternative calculation of his/her Initial 2007 RI/Area 2 Lobster Trap Allocation due to material incapacitation.

3. The *Marine Fisheries Regulations*, as amended April 11, 2007, did not contain a requirement for an applicant to have landed lobsters with traps during 2004 as qualifying criteria for an applicant to obtain an alternative calculation of his/her Initial 2007 RI/Area 2 Lobster Trap Allocation due to material incapacitation.
 4. The *Marine Fisheries Regulations*, as amended November 22, 2006, provided for a Medical/Military Service Hardship Exception that required an applicant to have landed lobsters with traps during 2004 in order for an applicant to obtain an alternative calculation of his/her Initial 2007 RI/Area 2 Lobster Trap Allocation.
 5. The Final Agency Order in In Re: James H. Low, AAD No. 07-059/F&WA, entered on January 25, 2008, concluded that, pursuant to Part 15.14.2-8 (a), an applicant claiming material incapacitation must meet the qualifying criteria set forth in Part 15.14.2-6 (a) (i) and (iii) of the *Marine Fisheries Regulations*; the fact that an applicant did not land lobsters in 2004 was irrelevant because that requirement is contained in Part 15.14.2-6 (a) (ii) of the *Marine Fisheries Regulations*.
 6. The changes in Part 15.14.2-6 and Part 15.14.2-8 of the *Marine Fisheries Regulations* that were set forth in the document filed with the Rhode Island Secretary of State on February 15, 2008 added the requirement that an applicant have landed lobsters with traps during 2004 as qualifying criteria for an applicant to obtain an alternative calculation of his/her Initial 2007 RI/Area 2 Lobster Trap Allocation due to material incapacitation.
 7. The changes in Part 15.14.2-6 and Part 15.14.2-8 of the *Marine Fisheries Regulations* that were set forth in the document filed with the Rhode Island Secretary of State on February 15, 2008 made a substantive change in the qualifying criteria for an applicant seeking an alternative calculation of his/her Initial 2007 RI/Area 2 Lobster Trap Allocation due to material incapacitation.
 8. The requirement that an applicant have landed lobsters with traps during 2004 in order to obtain an alternative calculation of his/her Initial 2007 RI/Area 2 Lobster Trap Allocation is an agency statement of general applicability that implements, interprets, or prescribes law or policy of the Department of Environmental Management.
 9. The changes in Part 15.14.2-6 and Part 15.14.2-8 of the *Marine Fisheries Regulations* that were set forth in the document filed with the Rhode Island Secretary of State on February 15, 2008 constitute rule-making action by an agency that must comply with the procedure set forth in R.I. Gen. Laws § 42-35-3 (a).
 10. The document filed with the Rhode Island Secretary of State on February 15, 2008 failed to comply with the procedure set forth in R.I. Gen. Laws § 42-35-3 (a).
 11. Pursuant to R.I. Gen. Laws § 42-35-3 (c) the changes in Part 15.14.2-6 and Part 15.14.2-8 of the *Marine Fisheries Regulations* that were set forth in the document filed with the Rhode Island Secretary of State on February 15, 2008 are invalid.
 12. Applicant has proven by a preponderance of the evidence that he has met the qualifying criteria set forth in sections 15.14.2-6 (a) (i) and (iii) of the *Marine Fisheries Regulations*.
 13. Applicant has proven by a preponderance of the evidence that he had no documented fishing performance during the three - year period 2001 - 2003, inclusive, due to material incapacitation.
 14. Applicant has proven 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 #MPURP000034.
 15. Pursuant to Part 15.14.2-9 (f) of the *Marine Fisheries Regulations* Applicant's Initial 2007 RI/Area 2 Lobster Trap Allocation is determined to be the highest value of the "Effective Traps Fished" for the years 1999 and 2000, that is, 450 traps.
- 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 is GRANTED.

2. The Initial 2007 RI/Area 2 Lobster Trap Allocation for RI Commercial License # MPURP000034 is determined to be 450 traps.

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

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 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.

APPENDIX A

%LIST OF EXHIBITS

APPLICANT'S EXHIBITS

Appl 1 Correspondence from Thomas J. Paolino, Jr., M.D. dated June 25, 2007

Full

DIVISION OF FISH AND WILDLIFE'S EXHIBITS

Div 1 Copy of Notice of Initial 2007 RI/Area 2 Lobster Trap Allocation issued to John Major for RI Commercial License #MPURP000034.

Full

Div 2 Copy of Applicant's hearing request dated June 8, 2007.

Full

Div 3 Summary of Applicant's 1999 - 2004 Lobster Landings and Trap Deployment Data for RI Commercial License #MPURP000034.

Full

Div 4 *Curriculum vita* of Thomas E. Angell.

Full

Footnotes

1

The letter dated February 15, 2008 from Gary Powers, DEM Deputy Chief Legal Counsel to Karen Hall [sic], Records Center, RI Secretary of State, with the attached revised *Marine Fisheries Regulations*, was provided by Attorney Powers and is identified as Attachment A in the Exhibit folder. This Decision hereafter refers to that filing in quotation marks, regardless of whether it is properly considered a technical revision under the requirements of the *Administrative Procedures Act*.

2

Addendum VII sets forth “Mandatory Elements” and “Optional Elements” for the effort control plan. Alternative calculations due to Medical/Military Hardships are contained in the “Optional Elements” section. *Addendum VII*'s “proposed approach” for applying the 1999 - 2000 data included the requirement for lobster landings with traps during 2004. *Addendum VII* Appendix B.

3

Mr. Angell's reference is to In Re: James H. Low, Amended Decision and Order, with attached Interoffice Memorandum, entered on April 5, 2008. The Low Decision is discussed below.

4

This was calculated based upon the information set forth in Div 3 and in accordance with section 15.14.2-9 of the *Marine Fisheries Regulations*.

5

The November 22, 2006 *Marine Fisheries Regulations* required an applicant to have landed lobster with traps in 2004 in order to use the Medical/Military Hardship Exception. The April 11, 2007 regulations and the August 1, 2007 regulations used a “material incapacitation” standard that did not require lobster landings in 2004.

6

See R.I. Gen. Laws § 42-35-4.2