



## SUMMARY OF THE EVIDENCE

The hearing was limited to legal argument on DNREC's motion to dismiss, which had been filed with the Board on May 22, 1992. The Board initially focused on the timeliness issue. DNREC argued that Watermans had notice of the adoption of the Regulations on February 18, 1992 through personal notice to the Secretary/Treasurer of Watermans. Watermans argued that section 1(f) of the Regulations contained two possible dates for commencement of the gill net closure period, June 4 and June 15, and therefore the Regulations were not ripe for appeal until one of those dates had been selected. This selection occurred on or before April 1, 1992.

## FINDINGS OF FACT

1. DNREC adopted the amendments and additions to the Tidal Finfish Regulations at issue here on January 15, 1992.
2. The Regulations were to be effective on the 31st day after filing with the Secretary of State, under section 5 of the Regulations.
3. The Regulations were filed with the Secretary of State on or before January 16, 1992, as shown by an acknowledgement dated January 16, 1992, from the Department of State.
4. On February 18, 1992, the Advisory Council on Tidal Finfisheries held a meeting in DRNEC's auditorium. Julie Wagner, the Secretary/Treasurer of Watermans, is a member of this Council and she served as acting chairperson of this

meeting, according to the meeting minutes. The Regulations were discussed at this meeting and Julie Wagner received a copy on that date.

5. Under section 1(f) of the Regulations, the date of implementation of the hook and line limitations (the gill net closure period) was to be either June 4 or 15, 1992, depending upon the response of New Jersey.

6. New Jersey promulgated its regulatory response on March 16, 1992.

7. By letter dated April 1, 1992, DNREC provided a summary of the Regulations to the Delaware commercial fisherman. This summary indicated that the June 4, 1992, commencement of the closure would remain; it would not be changed to June 15, 1992. Therefore, the selection of the final and binding gill closure date was made on or before April 1, 1992.

8. Although the commencement of the closure could have been changed by DNREC from June 4 to June 15, the Regulations became effective, by its terms, on or before February 18, 1992, after filing with the Secretary of State.

#### CONCLUSIONS OF LAW

The statute governing appeals to the Board was amended effective July 10, 1991 to provide a right of appeal if an

appellant files "within 20 days after receipt of the Secretary's decision or publication of the decision." 7 Del. C. sec. 6008(a). The decision here was the enactment of the Regulations. The Secretary/Treasurer of Watermans received a copy of these Regulations on February 18, 1992. The Regulations were effective on that date. Receipt by an officer of a corporation, an agent of the corporation, should be considered receipt by the corporation itself.<sup>1</sup> Therefore, the 20 day appeals deadline expired on March 9, 1992. This appeal was filed on April 15, 1992.

The Board has considered this 20 day appeal limit to be a jurisdictional limitation and, accordingly, this Board lacks jurisdiction to consider this appeal. While the Regulations did provide that the June 4 closure date could be changed to June 15, 1992, the Regulations were effective on February 18, 1992. Watermans had notice of the impending closure on February 18, 1992. Watermans contends that any closure is improper, regardless of the commencement date. It could have filed this appeal sooner. Further, Watermans seeks in this appeal to challenge the entire scope of the Regulations, not just the June 4 or June 15 deadlines. Finally, the appeal was filed by Watermans, a corporation, and not by any individually named commercial fisherman who might not have received notice until

---

1

For example, service of process upon a corporation may be made upon any officer of the corporation. 8 Del. C. sec. 321(a).

early April, 1992. A group of individuals who chose to associate and pursue legal remedies as a corporation are charged with notice provided to the officers of the corporation. This Board cannot disregard the corporate form and consider the date notice was provided to other individuals when the appeal was filed by the corporation.

This decision was unanimous.

  
Thomas J. Kealy, Chairman

  
Clifton H. Hubbard Jr.

  
Joan Donoho

  
Richard C. Sames

  
Edward Cronin

DATED: July 21, 1992

