



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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Lt. Governor

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Secretary

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Commissioner

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Director

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Michael Botelho  
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Fairhaven, MA 02719  
(p) 774-263-2477  
[myentourage@comcast.net](mailto:myentourage@comcast.net)

### **FINAL DECISION**

**Re: MICHAEL BOTELHO and COMMERCIAL COASTAL LOBSTER PERMIT DMF ID NO. 3384 and COMMERCIAL BOAT PERMIT DMF ID NO. 166361 and ALL APPURTENANT REGULATED FISHERY PERMIT ENDORSEMENTS**

Dear Mr. Botelho:

Upon a thorough review of the administrative record, I adopt the attached Recommended Final Decision of the Magistrate in its entirety as my **Final Decision** in this matter. Therefore, your remaining fishing permits, including your Commercial Coastal Lobster Permit DMF ID# 3384, Commercial Boat Permit ID# 166361, and all appurtenant regulated fishery permit endorsements have been revoked. This Final Decision is issued in accordance with G.L. c.30A, §11(8) and 801 CMR §1.01(11)(d).

Please return your permits by post upon receipt of this Final Decision to: Division of Marine Fisheries, Attn: Story Reed, 251 Causeway Street, Boston, MA 02114.

You have the right to seek judicial review of my decision in the Superior Court pursuant to G.L.c. 30A, §14(1). The complaint must be filed in Superior Court within thirty days of receipt of this **FINAL DECISION**.

Sincerely,

Daniel J. McKiernan, Director

Cc: Jared Silva, Agency Representative

Enclosed:  
Recommended Final Decision

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF FISH AND GAME  
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING  
DOCKET NO. CCLP-3584-JS-22

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*IN THE MATTER OF:*  
*MICHAEL BOTELHO* and COMMERCIAL  
COASTAL LOBSTER PERMIT DMF ID  
NO. 3384 and COMMERCIAL BOAT  
PERMIT DMF ID NO. 166361 and ALL  
APPURTENANT REGULATED FISHERY  
PERMIT ENDORSEMENTS

Respondent

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**RECOMMENDED FINAL DECISION**

I. Introduction

This matter involves allegations that Michael Botelho (the “Respondent”) engaged in taking paying customers onboard his fishing vessel for a charter fishing trip after his two charter boat permits had been revoked for cause following a Final Decision and Final Agency Action dated August 19, 2021 (the “Final Agency Action”). DMF alleges that the Respondent conducted or attempted to conduct a for-hire charter fishing trip for the purpose of recreational fishing without a valid for-hire permit in violation of Mass. Gen. L. ch. 130 §§ 17C and 80 and 310 CMR 7.10.

The Division of Marine Fisheries (“DMF”) seeks the permanent revocation of the Respondent’s remaining fishing permits, thereby terminating his ability to conduct commercial or for-hire fishing in the Commonwealth.

On May 6, 2022, all Parties and their witnesses attended an adjudicatory hearing. All witnesses were administered the oath and the hearing was recorded. The administrative record was compiled after the conclusion of the hearing. A Tentative Decision was issued on May 31, 2022. The Respondent filed five objections to the Tentative Decision, which are addressed in this Recommended Final Decision.

For the reasons set forth below, DMF has appropriately sought the permanent revocation of the Respondent’s remaining commercial fishing permits and endorsements.

## II. Background

The following facts were alleged in DMF's Request for an Adjudicatory Proceeding dated March 8, 2022 and attachments; Show Cause Order and Right to Request a Hearing dated March 11, 2022; the Permit Inventory for the Respondent (Hearing Exhibit 1); the Final Agency Action in the Matter of Michael Botelho (CBP-1029353-JS-21)(Hearing Exhibit 2); August 19, 2021 e-mail from Administrative Law Clerk sending Final Agency Action to the Parties (Hearing Exhibit 3); Massachusetts Environmental Police ("MEP") Incident Report 21-129-AR (Hearing Exhibit 4); August 23, 2021 e-mail from Agency Representative to Respondent (Hearing Exhibit 5); and through testimony by the Respondent, DMF Permitting and Statistics Program Manager Story Reed and MEP Sergeant Matt McClintock at the adjudicatory hearing.

In a prior proceeding, on January 29, 2021, DMF initiated an adjudicatory proceeding (CBP-1029353-JS-21) to take action to suspend or revoke the Respondent's Charter Boat Permits ID# 1029353, Retail Boat Permit ID# 178814, and regulatory fishery permit endorsements for black sea bass and tautog appurtenant to Boat Permit ID# 166361 and Coastal Lobster Permit ID# 3584. On August 19, 2021, the Director of DMF issued the Final Agency Action, which revoked the Respondent's two Charter Boat Permits (ID# 1029353) for Fishing Vessels ("F/V") Laurie Lee and Paige Lee, and regulated fishery permit endorsements for black sea bass and tautog appurtenant to Boat Permit ID# 166361 and Coastal Lobster Permit ID# 3584. Renewal of the Respondent's Retail Boat Permit ID# 178814 was limited to direct to the public sale of live lobsters and crab only, and Respondent's authorization for direct to public sales of finfish was revoked.

On August 19, 2021, DMF emailed the Respondent and his attorney who represented him in the adjudicatory proceeding sending them both the Final Agency Action and further indicating that if they had any questions, they could contact DMF's Administrative Law Clerk. On August 23, 2021, DMF again emailed the Respondent's attorney who represented in that matter, ccing the Respondent, indicated that certain fishing permit endorsements were not renewed, that his whole commercial permit suite had not been renewed, and indicating that other permits were eligible for renewal, and who to contact about renewal of the remaining eligible permits.

On September 25, 2021, more than thirty days after the date of the Final Agency Action, MEP Officer Michael Cote observed the Respondent preparing to take six people onboard his vessel from Hoppy's Landing in Fairhaven, Massachusetts. The six individuals confirmed that they had agreed to pay the Respondent \$100 each to take them recreationally fishing. When asked if they were going out on a charter trip, they responded "yes, a charter." Officer Cote observed the six anglers unloading coolers

from their van to take on the fishing charter. Officer Cote also observed the Respondent arriving shortly thereafter trailering his skiff, which he uses to transit from the boat ramp to his moored F/V Laurie Lee. The officer observed the Respondent transiting to F/V Laurie Lee, and then the Respondent returned to the dock located at the boat ramp on this vessel.

Officer Cote asked the Respondent what he was doing, and he indicated that he was in the business of conducting charter-fishing trips and was heading out with his clients. Officer Cote advised the Respondent that his charter boat permit had been revoked as of August 19, 2021, and that he was terminating the charter trip. The Respondent presented the officer with his May 17, 2021 charter boat permit. The Respondent said that he never received the August 19, 2021 revocation letter, and he also asserted that he was under the impression that his charter boat permit had not been suspended or revoked because he had appealed DMF's Final Agency Action within the required 30-day timeline.

MEP issued a Massachusetts Uniform Environmental Criminal Complaint Notice pursuant to 322 CMR 7.10 to the Respondent for "Operating as For-Hire Vessel after Revocation." MEP Sergeant Matt McClintock was present at a criminal complaint proceeding in New Bedford District Court concerning this citation, and he testified in the adjudicatory hearing in this matter that the Respondent stated during the criminal proceeding both that he did not receive notice of the permit revocation and also that he thought he could continue to run charter trips because he had appealed revocation of his permit.

The Respondent testified at the hearing that his email address is [myentourage@comcast.net](mailto:myentourage@comcast.net). Attorney Michael Harrington represented the Respondent in adjudicatory proceeding CBP-1029353-JS-21 initiated by DMF to suspend or revoke the Respondent's charter boat permits. On August 19, 2021, DMF's Administrative Law Clerk sent the Respondent an email at [myentourage@comcast.net](mailto:myentourage@comcast.net) notifying him of the Final Decision and ccing his attorney Michael Harrington. On August 23, 2021, DMF sent Michael Harrington, with a cc to [myentourage@comcast.net](mailto:myentourage@comcast.net), an email stating that "DMF did not renew and now has revoked certain commercial fishing permit endorsements" and that "the whole permit suite for both of his commercial fishing permits have not been renewed." The email went on to identify other permits that were not revoked that were eligible to be renewed, and who he should reach out to discuss how to go about renewing his remaining permits.

At the hearing, the Respondent contended that he never received the email(s) notifying him that his charter boat permit had been revoked, and that he believed that this important notice should have been sent out in hard copy through the mail.

### III. Findings of Fact

1. On January 29, 2021, DMF initiated an adjudicatory proceeding (CBP-1029353-JS-21) to take action to suspend or revoke the Respondent's Charter Boat Permit ID# 1029353, Retail Boat Permit ID# 178814, and regulatory fishery permit endorsements for black sea bass and tautog appurtenant to Boat Permit ID# 166361 and Coastal Lobster Permit ID# 3584.

2. On August 19, 2021, the Director of DMF issued the Final Agency Action, which revoked the Respondent's Charter Boat Permits (ID# 1029353) and regulated fishery permit endorsements for black sea bass and tautog appurtenant to Boat Permit ID# 166361 and Coastal Lobster Permit ID# 3584. The Final Decision of the Director of DMF adopted the findings of the Recommended Final Decision that "Respondent has a pattern of non-compliance with marine fishery regulations in recent years that supports DMF's determination that it is in the best interest of the Commonwealth to not renew or, in the alternative, to suspend for a substantial period of time, Respondent's for-hire and retail boat permits and certain regulated fishery permit endorsements."

3. On August 19, 2021, DMF emailed the Respondent at [myentourage@comcast.net](mailto:myentourage@comcast.net) and copied his attorney Michael Harrington who represented him in the adjudicatory proceeding (CBP-1029353-JS-21), sending them both the Final Agency Action and further indicating that if they had any questions, they could contact DMF's Administrative Law Clerk.

4. On August 23, 2021, DMF sent attorney Michael Harrington, with a copy to [myentourage@comcast.net](mailto:myentourage@comcast.net), an email stating that "DMF did not renew and now has revoked certain commercial fishing permit endorsements" and that "the whole permit suite for both of his commercial fishing permits have not been renewed." The email went on to identify other permits that were not revoked that were eligible to be renewed, and who he should reach out to discuss how to go about renewing his remaining permits.

5. The Respondent, through his attorney, filed an appeal of the Final Agency Action prior to the date of the incident involved in this matter (September 25, 2021).

6. On September 25, 2021, more than thirty days after the date of the Final Decision, MEP Officer Michael Cote observed the Respondent preparing to take six people on a for-hire charter fishing trip onboard his F/V Laurie Lee from Hoppy's Landing in Fairhaven, Massachusetts. Some of the charter patrons confirmed that they were going charter fishing with the Respondent and that they were paying him \$100 per person for the charter. The Respondent told Officer Cote that he was taking these people on a charter fishing trip.

7. At the time of the incident on September 25, 2021, the Respondent told Officer Cote that he never received the August 19, 2021 revocation letter, and he also asserted that he was under the impression that his charter boat permit had not been suspended or revoked because he had appealed DMF's Final Decision within the required 30-day timeline.

8. MEP issued a Massachusetts Uniform Environmental Criminal Complaint Notice pursuant to 322 CMR 7.10 to the Respondent for Operating as For-Hire Vessel after Revocation. MEP Sergeant Matt McClintock was present at the criminal complaint proceeding in New Bedford District Court concerning the criminal citation, and heard the Respondent argue that day both that he did not receive notice of the permit revocation and that also that he thought he could continue to run charter trips because he had appealed revocation of his permit.

9. DMF did not stay the Final Agency Action prior to the initiation of this adjudicatory proceeding, and no evidence was offered that the Superior Court stayed the Final Agency Action.

10. As of the date of the adjudicatory hearing on May 6, 2022, the Respondent held a Commercial Boat Permit ID# 166361 issued by DMF with regulated fishery endorsements for striped bass and scup; and a Coastal Lobster Permit ID# 3584 issued by DMF with regulated fishery endorsements for fish pot – scup, striped bass, fluke and scup.

#### IV. Applicable Statutes and Regulations

1. Mass. Gen. L. ch. 30A § 14(3) on “judicial review” provides that “[t]he commencement of an action shall not operate as a stay of enforcement of the agency decision, but the agency may stay enforcement, and the reviewing court may order a stay upon such terms as it considers proper.”

2. Mass. Gen. L. ch. 130 § 17C(c) provides that “[t]he director may issue a recreational saltwater fishing permit to an individual or a business entity that is engaged in for-hire recreational fishing in the coastal waters of the commonwealth, and such permit shall be valid for all persons on board the for-hire vessel. The director may establish categories and related requirements for such permits.”

3. Mass. Gen. L. ch. 80 provides that “[t]he director shall promulgate rules and regulations relative to the form, contents, and use of all permits issued under this chapter .... The director shall revoke and cancel and require the surrender of any permit issued under this chapter if, in his opinion, after a hearing, after due notice by him or some person designated by him, the holder has violated any rule or regulation of the director or of any provision of this section or section seventy-five, or upon a change in the facts and conditions set forth in such permit or certificate.”

4. 322 CMR 7.10(4)(b)(1)(b) provides that “[p]ursuant to M.G.L. c. 130, § 17C and 322 CMR 7.10, the Director may issue a recreational saltwater fishing permit to authorize ... for-hire vessels.”

5. 322 CMR 7.10(5)(a)(1) provides that “[t]he owner of the for-hire vessel shall obtain the applicable recreational saltwater fishing permit in accordance with permit categories for the following for-hire permit categories: (a) Permit Categories: 1. Charter Boat. The for-hire vessel has a capacity to carry up to six persons fishing as passengers from the for-hire vessel.”

## V. Discussion

There was no dispute among any of the Parties at the adjudicatory hearing that the Respondent was in the process of taking patrons out for a for-hire charter fishing trip on F/V Laurie Lee on September 25, 2021.<sup>1</sup> The only real matter in dispute seems to be whether the Respondent received adequate notice that his charter boat permits had been revoked by the Final Agency Action issued by the Director of DMF on August 19, 2021.

I did not find the Respondent’s testimony credible that he had not received notice of the Final Agency Action that revoked both of his charter boat permits. While I am not unsympathetic to the Respondent’s argument that an action as serious as revoking a fishing permit would be better sent hard copy by mail, DMF presented credible witness testimony and documentary evidence demonstrating that it sent an email notifying both his attorney and also the Respondent at [myentourage@comcast.net](mailto:myentourage@comcast.net) of the Final Agency Action, and also separately notified both of them by email that certain permits had been revoked, and advising them of next steps regarding the remaining permits.<sup>2</sup> The Respondent did not dispute at the hearing that this was his email address, but instead maintained that he never received the emails. While it is theoretically possible that one or both emails were not received, his lack of notice argument is inherently inconsistent with his statement to Officer Cote at the time the officer stopped

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<sup>1</sup> Respondent’s Objection 4 to the Tentative Decision that he never accepted payment from the charter patrons or left the dock is not persuasive. There was compelling evidence that Respondent intended to take these patrons on a charter trip that day, and he was only prevented from doing so because MEP stopped the trip and prevented him from leaving the dock.

<sup>2</sup> Respondent’s Objections 3 and 5 both contend that the Tentative Decision to revoke Respondent’s remaining permits is invalid because they were not yet in effect on the date this incident occurred and were only subsequently renewed by DMF. DMF, however, presented clear testimony from Story Reed that the agency did not renew these permits immediately after the original Final Agency Action, renewed them afterwards and only now seeks to revoke these remaining permits after a full adjudicatory hearing to determine whether that revocation is lawful. The fact that Respondent argues that he didn’t have these permits in effect at the time of the unpermitted charter fishing trip is hardly a reason why he should be allowed to hold other commercial fishing permits now. Mass. Gen. L. ch. 80 provides that “[T]he director shall revoke and cancel and require the surrender of any permit issued under this chapter if, in his opinion, after a hearing, after due notice by him or some person designated by him, the holder has violated any rule or regulation of the director ....”

the charter trip on September 25, 2021 that the Respondent believed that his charter boat permit had not been suspended or revoked because he had appealed DMF's Final Agency Action within the required 30-day timeline.<sup>3</sup> He made this same argument in the presence of Sergeant McClintock in a criminal proceeding in New Bedford District Court and again during the adjudicatory hearing in this civil matter.<sup>4</sup> The Respondent, through his attorney, had in fact already filed an appeal of the Final Agency Action prior to the date this September 25, 2021 incident occurred.

Mass. Gen. L. ch. 30A § 14 is clear that a pending appeal of a final agency action does not, by itself, stay the agency decision. Mass. Gen. L. ch. 30A § 14(3) on "judicial review" provides that "[t]he commencement of an action shall not operate as a stay of enforcement of the agency decision, but the agency may stay enforcement, and the reviewing court may order a stay upon such terms as it considers proper." DMF's Statistics and Program Manager Story Reed testified that neither he or anyone at DMF had stayed the Final Agency Action pending the appeal, and no one offered any evidence that it had been stayed by the court.

Massachusetts marine fishery laws and regulations governing commercial and for-hire fishing are complex and require close attention to detail to conserve increasingly scarce fishery resources and meet the requirements of complex interstate and federal fishery management plans, laws and regulations. In the prior Final Agency Action, DMF adopted the finding that "Respondent has a pattern of non-compliance with marine fishery regulations in recent years that supports DMF's determination that it is in the best interest of the Commonwealth to not renew or, in the alternative, to suspend for a substantial period of time, Respondent's for-hire and retail boat permits and certain regulated fishery permit endorsements." Sadly, this remains true in the present case.

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<sup>3</sup> Respondent's Objection 2 to the Tentative Decision contends that he was not properly informed of his permit revocation by the Director of DMF in "a hard copy format sent via direct mail." This argument is undercut by the fact that the Respondent clearly had notice that his charter boat permits had been revoked because he argued to MEP on the very day that this incident occurred that the permits were still in effect because he had already appealed the Final Agency Action within 30 days.

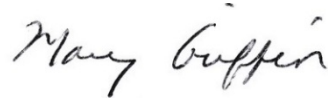
<sup>4</sup> Respondent's Objection 1 is that the citation issued by MEP was heard by a Clerk Magistrate in New Bedford District Court who found no probable cause to issue a criminal citation. DMF disputes this. Neither party offered evidence as part of the administrative record that documents the actual status of the proceeding in New Bedford District Court. Moreover, the evidence of the criminal citation issued and the proceeding in New Bedford District Court is used not as evidence of the alleged violations, but only as evidence that the Respondent was aware that his charter boat permits had been revoked because he stated both on the date he received the citations from MEP and later in District Court that he thought his permits were still valid because he had already appealed them.



VI. Recommendation

The administrative record supports DMF's decision to revoke the Respondent's remaining fishing permits, including his Commercial Coastal Lobster Permit DMF ID# 3384, Commercial Boat Permit ID# 166361, and all appurtenant regulated fishery permit endorsements.

Dated: June 28, 2022



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Mary B. Griffin, Esq.  
Presiding Officer  
Department of Fish and Game

**NOTICE**

This is a Final Recommended Decision of the Presiding Officer. This decision is not a Final Decision of the Director and may not be appealed to the Superior Court pursuant to G.L. c.30A. The Director's Final Decision will contain a NOTICE on the subject of judicial review. No party shall communicate with the Director regarding this case, unless the Director, in his sole discretion, decides otherwise.