



David E. Pierce, PhD.
Director

Commonwealth of Massachusetts

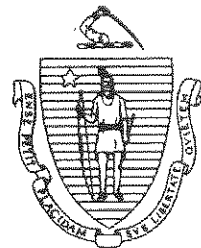
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March 29, 2018

Donald Parsons
317 Concord Street
Gloucester, MA 01930

Re: *Matter of Parsons*, Adjudicatory Proceeding
Docket No. SSW-174809-DM-17

FINAL DECISION

Dear Mr. Parsons:

Upon review and a thorough consideration of the administrative record; your comments to the Tentative Decision; and the Magistrate's findings, discussion, conclusion, and recommendation, I have decided to adopt the Magistrate's Recommended Final Decision in its entirety as my Final Decision in this adjudicatory proceeding.

Therefore, shellfish and seaworm permit DMF ID #174809 and your shellfish transaction card are hereby revoked and will not be renewed. In addition, no new shellfish permit or transaction card of any kind will be issued to you or any individual, corporation or entity seeking one on your behalf. You may not apply for a shellfish permit of any kind. An application form for any shellfish permit that you submit will be returned to you. If such a permit is issued to you by mistake from any of the Division's offices, such permit shall be considered void and must be returned to the Division immediately.

Pursuant to G.L. c.30A, §14 you have thirty days from the service date of this letter to file an action for judicial review in a court of competent jurisdiction.

Regards,

David E. Pierce, Ph.D.
Director

Recommended Final Decision

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

SUFFOLK, SS.

ADJUDICATORY PROCEEDING
DOCKET NO. SSW-174809-DM-17

IN THE MATTER OF:

DONALD PARSONS and COMMERCIAL)
SHELLFISH PERMIT DMF ID #174809)
and SHELLFISH TRANSACTION CARD,)

Respondent)

RECOMMENDED FINAL DECISION

This is my Recommended Final Decision in the above captioned proceeding. It was preceded on February 9, 2018 by a Tentative Decision that respondent was given an opportunity to review and file written objections to.¹ Respondent reviewed and filed a generalized statement regarding the recommendation contained in the Tentative Decision. While respondent's written objection is made part of the record and will be forwarded to the Director, it is not of such a nature as to require any modification of the findings and conclusion of the Tentative Decision.

I. THE HEARING

The hearing was conducted on October 24, 2017. Those persons in attendance included the Agency Representative Daniel McKiernan, the Respondent Donald Parsons, the agency Chief of Permits and Reporting Story Reed, Massachusetts Environmental Police Officer Gregory Haarala, and Administrative Law Clerk Jared Silva. All persons, except Mr. Silva, were administered the oath. The hearing was electronically recorded.

The hearing process was explained to Mr. Parsons who indicated that he understood. There was approximately 12 minutes of time devoted to informal conversation, questions and answers of the hearing process for Mr. Parsons' benefit, including how a final agency decision regarding the permit is made and by whom. The hearing was stopped at times where clarification seemed appropriate or if requested by Mr. Parsons. The documents received in evidence were first shown to Mr. Parsons to confirm that he was familiar with each. Throughout the hearing, Mr. Parsons was given as much time as he required reviewing and asking questions about any document before it was received in evidence.

¹ 322 CMR §8.01(10)(n)(1).

II. ISSUES FOR ADJUDICATION

1. Did Mr. Parsons violate the provisions of G.L. c.130, §§2 and 80, and 322 CMR §7.01(2) by selling shellfish to a wholesale dealer on numerous occasions between the months of January and July 2017 without holding a 2017 *Marine Fisheries* commercial shellfish permit and shellfish transaction card?

2. Did Mr. Parsons violate the provisions of G.L. c. 130, §82 and 322 CMR §16.03 by not affixing to the three containers of shellfish he sold to a wholesale dealer a shellfish identification tag that contained the following required information:

- a) the full name of the harvester;
- b) the DMF commercial shellfish permit number;
- c) the date and time of harvest;
- d) the type and quantity of shellstock;
- e) the initials of the state where harvested from, the Shellfish Growing Area name and number and, if applicable, the aquaculture site number;
- f) the name, designation and classification of the shellfish area where harvested; and
- g) the following statement shall be written in bold capitalized type:

"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED, AND THEREAFTER KEPT ON FILE FOR 90 DAYS".²

3. Did Mr. Parsons violate the provisions of G.L. c.130, §21 and 322 CMR §7.01(14)(k) by knowingly submitting false, incomplete and inaccurate annual catch report forms on each permit renewal year for the years 2001 through 2010 in connection with his permit renewal application for those years?

III. ADMINISTRATIVE LAW ON EVIDENCE

Marine Fisheries' hearings are conducted pursuant to the Standard Rules of Adjudicatory Practice and Procedure. 801 CMR §1.00, et seq. The formal rules of 801 CMR §1.01 apply to the instant case. A statement to this effect was contained in the Director's Notice and the agency Order delivered to Mr. Parsons. Matters not addressed in 801 CMR §1.00 are to be considered in light of the relevant administrative and due process procedures that are contained in G.L. c.30A. In hearings resulting from Orders to Show Cause, the agency issuing the Order shall present its evidence first. The burden of proof on all issues to be adjudicated rests with the claimant, in this case the agency, which must show by the "clear weight" or the "preponderance" of *credible* evidence that its position is justified. *Medical Malpractice Joint Underwriting Association of Massachusetts v. Commissioner of Insurance*, 395 Mass. 43 (1985); *Doe v. Sex Offender Registry Board*, 428 Mass. 90 (1998).

² See 322 CMR §16.03.

With the exception of rules governing privilege, a Magistrate need not observe the rules of evidence that apply in the civil courts. G.L. c.30A, §11(2).³ The Magistrate makes decisions on admission or exclusion of evidence, resolves questions of procedure and may determine the order of presentations. 801 CMR §§1.01(10)(d)(2) and 1.01(10)(e)(4). Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. G.L. c.30A, §11(2). Any party may object to another party's evidence. 801 CMR §1.01(10)(f).

Under G. L. c. 30A, §14(7)(e), "a decision of an administrative agency may be set aside on judicial review if the court determines that the decision is unsupported by substantial evidence." General Laws c. 30A, Section 1(6), inserted by St.1954, c.681, §1, defines substantial evidence as "such evidence as a reasonable mind might accept as adequate to support a conclusion." *Deacon Transportation, Inc. v. Department of Public Utilities*, 388 Mass. 390, 396 (1983), citing *New Boston Garden Corp. v. Assessors of Boston*, 383 Mass. 456, 466 (1981); *Almeida Bus Lines v. Department of Public Utilities*, 348 Mass. 331, 342 (1965).

In *Covell v. Department of Social Services*, 439 Mass. 766 (2003), the Supreme Judicial Court held that "substantial evidence may be based on hearsay alone if that hearsay has 'indicia of reliability'". See also *Embers of Salisbury, Inc. v A.B.C.C.*, 401 Mass. 526 (1988) where a witnesses' motive to lie went to the weight to be given her testimony, but not to its admissibility. In addition, hearsay testimony that is corroborated and is not contradicted is reliable evidence. *Goodridge v. Director of Division of Employment*, 375 Mass. 434, (1978).

The issues for adjudication in the instant case are based in part on the citations issued by Lt. Clayton for violations he reportedly found during his inspections.⁴ The parties waived an evidentiary hearing in *Essex Seafood* by written settlement agreement. See Final Decision, *Matter of Lane, d/b/a Essex Seafood*, WDP-84046-17-DM (2017).⁵ Lt. Clayton's reports, therefore, have previously served in an evidentiary function and already served the Director as the regulatory foundation for the immediate suspension of Essex Seafood's dealer permit and in agency settlement of *Essex*. The same reports have credibility and are relevant in the instant case.

Lt. Clayton was not in attendance at the hearing. MEP Officer Gregory Haarala was. While Officer Haarala assisted Lt. Clayton in the April 25th dealer inspection, he did not assist in writing-up report #17-184-OF, nor did he assist in the July 30th follow-up dealer inspection. With

³ Hearsay is admissible in federal administrative adjudications. *McKee v. United States*, 500 F.2d 525, Ct.of Claims (1974). The Federal Administrative Procedures Act provides that *any* oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of immaterial or unduly repetitious evidence. 5 USC §556(d). Emphasis Supplied.

⁴ 322 CMR §16.06(2)(a) requires that the Director's notice of permit suspension contain the "written report from the officer that sets forth the factual and regulatory basis for the officer's determination that there is reasonable cause for citing such permit holder for a violation of 322 CMR §16.00." Lt. Clayton's law enforcement report shows that citations were issued to Mr. Parsons for violations of G.L. c.130, §80 and 322 CMR §16.00.

⁵ There is no suggestion here that MEP's enforcement protocol follow up with the filing of a Notice of Claim for an Adjudicatory Proceeding. To the contrary, MEP has multiple enforcement tools that include non-criminal/criminal citations, application for criminal process in district courts and seizure/forfeiture authority. As a law enforcement officer the application of discretion applies to his decision on whether or not to file a Notice of Claim. See G.L. c.130, §§9 and 12; G.L. c.21A, §§10b-10i.

that explanation, Officer Haarala read Lt. Clayton's reports into the record. Mr. Parsons made no objection.⁶ The reports were received in evidence.

Officers are allowed to read directly from their law enforcement reports and narratives at hearings, particularly where they are the claimant. *Matter of Botelho*, CBP-167240-15-S0 (2015); *Matter of Fountain*, SSW-150031-16-JH (2017). MEP law enforcement reports are officially prepared by individual officers in the line of duty and have always served an important evidentiary role in *Marine Fisheries* adjudicatory proceedings.⁷ It would be an unnecessary burden on the process of ensuring permit compliance by both harvester and dealer while at the same time overseeing the Commonwealth's shellfish industry and public health if MEP Officers were unable to read from their enforcement reports.⁸

Law enforcement reports contain the results of investigations, inspections, seizures, issuance of citations, and arrests. The information includes the offender's name and address; his or her *Marine Fisheries* permit identification number; the Officer(s) narrative describing the circumstances and facts surrounding the investigation, inspection, seizure or arrest; a list of violations; and action taken including citations issued for non-compliance with applicable marine fishery laws. The report is a regulatory determinant for the exercise of the Director's authority to immediately suspend a shellfish permit.⁹ These reports are maintained by the Office of Law Enforcement, an agency of the Executive Office of Energy and Environmental Affairs, in the exercise of its enforcement powers. G.L. c.21A, §§10a-10j; see also MEP Policies governing reports.

There is no motive in general and none raised in the instant case for these or any MEP Officer to falsify his or her law enforcement report. Over forty years and hundreds of hearings, no MEP law enforcement report has been called into question during a *Marine Fisheries* adjudicatory proceeding.

⁶ Hearsay is admissible in adjudicatory hearings. *Town of Brookline v. Commissioner of DEQE*, 387 Mass. 372, (1982). Hearsay is admissible in federal administrative adjudications. *McKee v. United States*, 500 F.2d 525, Ct. of Claims (1974). The Federal Administrative Procedures Act provides that any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of immaterial or unduly repetitious evidence. 5 USC §556(d). Reading from a MEP law enforcement report and receiving the report itself into evidence at an adjudicatory hearing is a readily used administrative practice of the agency. See note 10 and cases cited therein, *supra*.

⁷ The agency has a long history of having adopted and followed this practice for the conduct of adjudicatory hearings. See *Matter of Vitale*, Docket No. OL-00796, (1996); *Matter of Fay*, Docket No. QMSA-7119-08-PH (2008); *Matter of Cuoto*, Docket No. WDP-8924-08-PH (2008); *Matter of Merenda*, Docket No. 053530-08-KR (2008), permit revocation upheld on review, Essex Sup. Ct., #ESCV2009-01017-B (2009); *Matter of Silva*, Docket No. CL-0696 (2009); *Matter of Thong Le*, Docket No. CCLP-6140-13-DM (2010), permit revocation upheld on appeal, *Matter of Tasha*, Docket No. CCL- 2284-13-DM (2013), permit revocation upheld on judicial review (citation omitted).

⁸ The rules governing shellfish harvesting and handling are "intended to ensure that the Commonwealth's shellfish industry complies with: (a) the National Shellfish Sanitation Program (NSSP), which regulates the harvest and transport of shellfish; and (b) the Food and Drug Administration (FDA) requirements for minimizing the risk of food borne illnesses to consumers within and outside of the Commonwealth." 322 CMR §16.01.

⁹ 322 CMR §16.06(2)(a) provides that "[s]ubject to the procedures in 322 CMR 16.05(6)(b), the Director may suspend without a prior hearing the permit of a commercial fisherman, aquaculturist, or a wholesale dealer whenever an officer authorized to investigate and enforce shellfish laws and regulations [sic] of the Commonwealth determines that there is reasonable cause for citing such permit holder for a violation of 322 CMR 16.00. Such permit suspension shall not be effective until the permit holder is in receipt of ... [t]he written report from the officer that sets forth the factual and regulatory basis for the officer's determination that there is reasonable cause for citing such permit holder for a violation of 322 CMR 16.00." Emphasis added.

The weight accorded to hearsay evidence is left for the Magistrate. Such evidence is viewed on the basis of credibility of the witness and the reliability of the particular evidence. *Costa v. Housing Authority of Fall River*, 453 Mass. 614 (2009); *School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7 (1996). In the case *Commonwealth v. Durling*, 407 Mass. 108 (1990) the Supreme Judicial Court held that “the due process clause does not place a per se prohibition on the use of hearsay evidence” and went on to find that police reports are sufficiently reliable.¹⁰

In the instant case, however, Mr. Parsons did not have the opportunity to cross-examine Lt. Clayton. The evidentiary issue therefore is whether or not Officer Haarala’s reading of Lt. Clayton’s reports into the record and receiving the reports in evidence from Officer Haarala, rather than Lt. Clayton himself, make the reports or particular portions of these reports any less credible or reliable because Lt. Clayton was not subject to cross examination? Given the above analysis, Lt. Clayton’s reports as documentary evidence in this case become no less credible or reliable because he was not subject to cross-examination. This is particularly true whereas here any oral conversations that Lt. Clayton had, anything he recorded in his reports as saying to any person while he was inspecting Essex Seafood, and any statement of his or any other person as recited or quoted in his reports have no evidentiary value in adjudicating the issues in this case.

IV. DISCUSSION

1. Evidentiary Documents. It may be that the documents received into evidence at the hearing comprise substantial evidence to support the findings of fact in this Tentative Decision.¹¹

Six categories of documents were received in evidence at the hearing. In addition to Lt. Clayton’s two reports, the following documents are part of the record in this case. They are: (a) respondent’s permit inventory; (b) respondent’s shellfish harvesting, handling and transport affidavit; (c) respondent’s annual catch report forms for the years 2000 through 2010; (d) agency audit results of the Standard Atlantic Fisheries Information Systems (SAFIS);¹² (e) ten *Marine Fisheries*’ shellfish transaction slips, and (f) three shellfish identification tags.

(a) The respondent’s permit inventory is a listing maintained by *Marine Fisheries* of each permit and each regulated fishery special permit endorsement that has been issued to a particular harvester or dealer. The permit inventory is a document created and maintained by the agency for each and every person issued a *Marine Fisheries* permit. The permit inventory of Mr. Parsons

¹⁰ The Supreme Court’s decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) does not apply to a MEP officer reading the law enforcement report of a fellow MEP officer at an administrative hearing. *Melendez-Diaz* was a sixth amendment case where the Court held that the defendant in a criminal prosecution involving the possession of heroin was denied the right to confront the witnesses against him when the prosecution, pursuant to a statute, introduced written test results that the substance possessed by defendant was heroin in lieu of the scientist’s testimony. It is enough to say that the instant case is administrative, not criminal, and the penalties involve the suspension, revocation, or non-renewal of a commercial shellfish permit and not incarceration in a state prison.

¹¹ To be sure, the reports have evidentiary value. See discussion of credibility and reliability, pp.3-6 and notes, *supra*. The reports were authenticated by Officer Haarala and received in evidence at the hearing. Law enforcement report #17-184-OF confirms that Officer Haarala assisted Lt. Clayton in conducting the first administrative inspection of Essex Seafood on April 25, 2017 and the May follow-up inspection. During the first inspection Lt. Clayton took possession of nine transaction slips and the two shellfish tags. Law enforcement report #17-170-AR confirms that Lt. Clayton conducted a second inspection of Essex Seafood on July 30, 2017.

¹² See discussion of SAFIS data, p.7, *infra*.

was authenticated and described by Mr. Reed and received in evidence. The inventory establishes that from 2002 through 2011 Mr. Parsons held a commercial shellfish permit. ID #097672.¹³ Mr. Parsons did not renew the 2011 permit issued to him. The inventory shows that between the years 2012 and July 2017, Mr. Parsons did not hold any commercial shellfish permit. Mr. Parsons acknowledged as much at the hearing.¹⁴

(b) Respondent's shellfish affidavit was signed by him on July 13, 2017 as a requirement for the issuance of a commercial shellfish permit. Mr. Parsons filed an application for a commercial shellfish permit at the *Marine Fisheries* regional office in Gloucester. Uninformed of the results of the MEP inspection of Essex Seafood, the *Marine Fisheries*' regional permitting office approved the application and a commercial shellfish permit was issued to Mr. Parsons. As a condition to issuance of the permit, Mr. Parsons signed the required Shellfish Harvesting, Handling and Transport Affidavit under the pains and penalties of perjury. The affidavit was authenticated and described by Mr. Reed and received in evidence at the hearing. Mr. Parsons testified that he recognized the affidavit and that the signature was his.

The affidavit describes the regulations at 322 CMR §16.00 that govern the safe harvest, handling and tagging of shellfish in detail and the importance attached to voluntary compliance. In particular, the affidavit and §16.03 is very clear about commercial harvesters immediately affixing to all containers or bushels of their shellfish a tag that contains all the information necessary to trace and track the origins of the shellfish.¹⁵

(c) Respondent's ten annual catch reports were authenticated and described by Mr. Reed and received in evidence.¹⁶ There are ten, one for each year that respondent was issued and held a *Marine Fisheries* commercial shellfish permit - 2001 through 2010. With the exception of the 2010 agency summary of Mr. Parson's annual catch report for that year, each was completed and signed by respondent as a condition and requirement of the annual permit renewal. The permit inventory shows that Mr. Parsons renewed his commercial shellfish permit for ten consecutive years between 2001 and 2010.¹⁷ Each of the annual catch report forms show that the box labeled "Did Not Fish" has been checked off. With the exception of the 2010 agency summary, all nine annual reports show that notwithstanding his permit, Mr. Parsons harvested and sold no shellfish during all of that time.¹⁸

¹³ An inventory is created and maintained by the agency for each person who is issued a *Marine Fisheries*' permit. Inventories contain permits issued each year beginning in 2000. For years prior to 2000 the agency maintains its permit data in IBM printout format. *Ad. Notice*.

¹⁴ Mr. Parsons testified that he had a full time job during this time.

¹⁵ Mr. Parsons did not contest any of the documentary evidence. To the contrary, he identified all of the documentary evidence; he was familiar with the documents; and he acknowledged having received them either prior to or during the hearing. He did not dispute the documents themselves, their contents or receipt in evidence. In the end, Mr. Parsons testified, "I'm not going to deny what's happened here."

¹⁶ Mr. Reed testified that Mr. Parson's 2010 report was summarized by the agency.

¹⁷ The permit inventory shows that Mr. Parsons did not renew his 2010 permit, and did not reapply for a commercial shellfish permit until July 13, 2017, well after the April 25, 2017 MEP inspection of Essex Seafood.

¹⁸ The catch report form provides that "knowingly falsifying any information contained in this report constitutes the act of perjury and may result in a loss ... of the permit." G.L. c.130, §§2, 21 and 33; 322 CMR §7.01(5)(g). For purposes of G.L. c.268, §1, shellfish management, shellfish permitting, commercial shellfish sales, shellfish reporting requirements, enforcement of shellfish laws, and the Commonwealth's responsibility to ensure traceability for the public's health, welfare and safety is clearly a "material matter" within the meaning of G.L. c.268, §1.

Mr. Parson's acknowledged that all nine catch report forms, as well as the tenth summary form, covering the years 2001 through 2010 were his, and that the signature on each form was his. These ten catch reports contradict the results of the agency audit of SAFIS records, which show that Mr. Parsons was actively selling shellfish to Essex Seafood during these years.

(d) The SAFIS audit was also done by Mr. Reed. The Atlantic Coastal Cooperative Statistics Program, Standard Atlantic Fisheries Information System (SAFIS) collects commercial data that wholesale fish dealers from the Atlantic coastal states are required to submit. SAFIS data collected from wholesale dealers is used by state, federal, regional, and international fishery management agencies and fishery managers to develop, amend, and implement conservation and management plans for particular fish and shellfish species. Wholesale dealers are required to report all purchases of shellfish by date, quantity, area, harvester and harvester permit number. Inaccurate data, incorrect data, or failure to report data to SAFIS by a wholesale dealer may result in the suspension or revocation of the dealer's permit.¹⁹

Mr. Reed testified that the audit of the SAFIS records show no reports of shellfish purchases by Essex Seafood from Mr. Parsons between the months of January to June 2017. However, the nine transaction slips removed from Essex Seafood by Lt. Clayton show nine individual sales of shellfish by Mr. Parsons to Essex Seafood. SAFIS records also show that Essex Seafood reported purchasing a total of approximately five-hundred and twenty-seven pounds of soft shell clams on a total of five separate occasions between July 25, 2017 to September 11, 2017, the months after Mr. Parsons was issued a 2017 *Marine Fisheries* commercial shellfish permit. Finally, SAFIS records show that Essex Seafood reported purchasing from Mr. Parsons an overall total of approximately 11,923 pounds of soft shell clams on approximately 116 separate occasions between the years 2005 through 2014. This, notwithstanding that Mr. Parsons reported having not fished between 2001 and 2010 and that he did not hold a commercial shellfish permit between 2011 and 2014.

(e) The ten shellfish transaction slips were authenticated and described by Mr. Reed. *Marine Fisheries*' shellfish transaction slips are required to be used by dealers with every purchase of shellfish from a harvester by imprinting the harvester's transaction card which is only issued to the holder of a commercial shellfish permit. Nine transaction slips show that, in lieu of imprinting the harvester's transaction card, the date, the name "Parsons", the number "6230", the area classification number, and the amount of shellfish purchased were handwritten in its place. These nine slips show that Mr. Parsons sold approximately one thousand pounds of shellfish to Essex Seafood between January 2, 2017 and April 22, 2017, the period of time during which Mr. Parsons did not hold a commercial shellfish permit.²⁰

The tenth transaction slip shows that Mr. Parsons sold 100 pounds of shellfish to Essex Seafood on July 24, 2017. This transaction slip did contain the imprint of Mr. Parson's transaction card issued to him along with a commercial shellfish permit on July 13, 2017.

(f) The two non-compliant shellfish identification tags that were removed from two bushels of shellfish and taken possession of by Lt. Clayton during the April inspection of Essex Seafood were also described by Mr. Reed during his testimony. The two tags are identical. As

¹⁹ G.L. c.130, §21; 322 CMR §7.07(4)(d). See <http://www.accsp.org>.

²⁰ Both the permit inventory and respondents testimony corroborate this conclusion.

explained by Mr. Reed, these are not shellfish harvester tags *required to be completed by the harvester* and attached to each container of shellfish sold to a dealer.²¹ Rather, they are dealer form tags where the blank side shows the hand written notations: "Parsons"; "4/22"; "100 lbs"; "6230".²²

V. FINDINGS OF FACT

Based on the testimony and the documentary evidence presented at the hearing, I hereby find the following facts:

1. On April 25, 2017, Lt. Kevin Clayton and Officer Gregory Haarala conducted an administrative inspection of the wholesale dealer Essex Seafood in Gloucester, during which time they Lt. Clayton took possession of ten commercial transaction slips, and two non-compliant shellfish tags.
2. On July 30, 2017, Lt. Kevin Clayton conducted a follow-up administrative inspection of the wholesale dealer Essex Seafood in Gloucester and took possession of one commercial transaction slip.
3. Mr. Parsons did not hold a *Marine Fisheries* commercial shellfish and seaworm permit at anytime between January 1, 2012 and July 13, 2017.
4. Between the years 2005 through 2010, and the years 2013 through 2014, Mr. Parsons sold a total of approximately 11,923 pounds of shellfish to Essex Seafood.
5. During the months of January, February, April and May 2017, Mr. Parsons sold a total of approximately 1,056 pounds of shellfish to Essex Seafood.
6. Mr. Parsons knowingly falsified annual catch reports that he completed, signed and filed with *Marine Fisheries* for the years 2002 through 2010 by stating that he did not fish during any of those years.
7. On April 22, 2017 and July 30, 2017, three containers of shellfish sold by Mr. Parsons to Essex seafood were not tagged with the following information: full name; DMF commercial shellfish permit number; date and time of harvest; type and quantity of shellstock; initials of the state where harvested from; name, designation and classification of the shellfish area where harvested from; and the following statement written in bold capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED, AND THEREAFTER KEPT ON FILE FOR 90 DAYS".
8. Between July 22 2017 and September 9, 2017 Mr. Parsons harvested and sold to Essex Seafood approximately 527 pounds of shellfish.

²¹ See ¶2, p.2, *supra* for the list of information required to be written on the shellfish tag by the harvester.

²² 322 CMR §16.03 requires that all containers or bags of shellfish be tagged before removed from the digging area. The harvester must record the information required by 322 CMR §16.03 for traceability purposes to protect the public health, welfare and safety from unknowingly consuming tainted shellfish.

9. Mr. Parsons held a *Marine Fisheries* commercial shellfish permit and transaction card for the years 2000 through 2010.

VI. CONCLUSIONS OF LAW

1. It is a violation of G.L. c.130, §80, for any person to fish or take fish for commercial purposes from waters of the Commonwealth without holding a *Marine Fisheries* commercial fisherman permit.

2. It is a violation of 322 CMR §7.01(2)(g) to harvest, possess or land shellfish for commercial purposes without being issued a *Marine Fisheries* commercial fisherman permit for shellfish.

3. It is a violation of 322 CMR §7.01(2)(k) for any person to sell shellfish without the authorization of a *Marine Fisheries* shellfish transaction card.

4. It is a violation of 322 CMR §7.01(14)(a) for any person to conduct any marine fishery activity in the Commonwealth without the appropriate permit(s) required by the relevant provisions of G.L. c.130 and 322 CMR.

5. It is a violation of 322 CMR §7.01(14)(f) for any person to violate any provision of G.L. c.130 or 322 CMR when conducting a marine fishery activity authorized by permit.

6. It is a violation of 322 CMR §16.03(1)(a)(1) for any harvester to transport containers of shellfish from the initial area of harvest before tagging them in accordance with the requirements of 322 CMR §16.03(1)(a)(2).

7. It is a violation of 322 CMR §16.03(1)(a)(2) for any harvester to: (a) use a tag that is not made of durable and waterproof material; (b) use a tag that is less than 13.8 square inches in size, or less than 2 $\frac{5}{8}$ " by 5 $\frac{1}{4}$ "; (b) use a tag that does not have legibly written on it in indelible ink, the full name of the harvester; the harvesters commercial shellfish permit DMF ID number; the date and time of harvest; the type and quantity of shellstock; the initials of the state where harvested from; the name, designation and classification of the shellfish area where harvested from; and the statement written in bold capitalized type - "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED, AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

8. It is a violation of G.L. c.130, §21 for any permit holder to submit a catch report to the Director knowing that the contents of the report are false.

9. It is a violation of G.L. c.130, §33 for any permit holder who uses any device to fish or shellfish, to submit a catch report to the Director knowing that the contents of the report are false.

10. It is a violation of 322 CMR §7.01(5)(g)(2) to violate the affidavit statement signed by respondent as a condition to the issuance by *Marine Fisheries* of commercial shellfish and seaworms permit DMF ID No.174809.

11. It is a violation of 322 CMR §7.07(14)(b) for any person to falsify any application form, documentation or letters of support in conjunction with any permit application.

VII. CONCLUSION

Based on the above, the answer to all three issues for adjudication in this case is, *Yes*.

The record shows that Mr. Parsons has played fast and loose with the Commonwealth's shellfish regulations for as far back as the permit inventory shows - the year 2000. Using that as a starting point, for approximately 17 years Mr. Parsons has moved freely on and off unknown coastal tidal flats, harvesting and selling unknown quantities of shellfish, and hiding it all with the assistance of Essex Seafood by not tagging the shellfish and by filing false catch reports with *Marine Fisheries*.

Of particular concern to MEP and *Marine Fisheries* is that the recently promulgated shellfish harvest and handling regulations at 322 CMR §16.00, et. seq. have placed Massachusetts under the watchful eye of National Shellfish Sanitation Program which oversees the harvest and transport of shellfish in the various States, and the United States Food and Drug Administration (FDA) which establishes model "ordinances" or regulations to be implemented by the various States for the purpose of minimizing the risk of food borne illnesses to consumers of seafood, such as shellfish, on a national basis. Under these circumstance, the public health, welfare and safety is at risk by unknowingly consuming tainted shellfish because Mr. Parsons has, at least up until now, been able to hide the origins of what he digs, the areas from where he digs, and the quantity of what he digs and sells to wholesale dealers. The record shows that the he deliberately and knowingly prevents the traceability of the shellfish he digs and sells.

Mr. Parsons does not deny the evidence. His testimony gives a fairly accurate but brief description of the past 40 years of shellfish management in Massachusetts, much of which he derides with the recent development of 21st century technology such as computer chips and smart phone apps. Voluntary compliance by harvesters and dealers with statutes and regulations specifically designed to trace the origins of shellfish entering the stream of commerce is essential to the continued protection of the public health, welfare and safety, the growth of the shellfish industry and the ensured quality of Massachusetts shellfish. It would be injudicious to issue a permit to a harvester that exhibits blatant and ongoing disregard of these shellfish harvesting requirements. One can only hope that Mr. Parsons will cease his illegal shellfish activities that have been conducted with impunity over these many, many years.

VIII. RECOMMENDATION

Violations of this nature deliberately intended to conceal each aspect of a harvester's shellfish operations impede the enforcement duties and responsibilities of MEP. Conducted over long periods of time with the cooperation of a wholesale dealer poise a serious and significant threat to the public health specifically, and to the public's confidence in the Commonwealth's shellfish industry in general. Issuing a shellfish permit to Mr. Parsons in light of this record would not be in the best interest of the Commonwealth.

I am recommending that the Director not reinstate, not renew and not issue or reissue a shellfish permit of any kind to Mr. Parsons. In addition, I am recommending that Mr. Parsons be prohibited from applying for any shellfish permit or shellfish permit endorsement at any time in the future. In the event the agency issues such a permit to Mr. Parsons in error or by mistake, as it did on July 23, 2017, that permit shall be invalid, void and returned to the agency.

Date: March 26, 2018

By: David C. Hoover
David C. Hoover, Esq.
Administrative Law Magistrate
Department of Fish and Game

NOTICE

This decision is a Recommended Final Decision of the Administrative Law Magistrate. It has been transmitted, with the administrative record and respondent's comments to my February Tentative Decision, to the Director for his Final Decision in this matter. My Recommended Final Decision is therefore not a Final Decision of the Director and may not be appealed to Superior Court pursuant to G.L. c.30A. The Director's Final Decision is subject to the right of judicial review, and will contain a notice to that effect.

Because this matter has now been transmitted to the Director, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Director's office regarding this decision unless the Director, in his sole discretion, determines otherwise.