



David E. Pierce
Acting Director

Commonwealth of Massachusetts

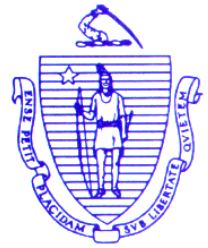
Division of Marine Fisheries

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Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Ronald Amidon
Commissioner

Mary-Lee King
Deputy Commissioner

April 11, 2018

Chad Whittemore
10 Patriots Circle
Gloucester, MA 01930

Re: **Matter of Whittemore, Docket No. SSW-172620-DM-17**
FINAL DECISION

Dear Mr. Whittemore:

Upon a thorough review of the administrative record, it is my decision to adopt in its entirety the attached Recommended Final Decision of the Magistrate as my **FINAL DECISION** in this case.

Therefore, your shellfish and seaworms permit DMF ID No.172620 and your shellfish transaction card are hereby permanently revoked. You may not apply for, hold or otherwise be issued any permit, authorization or regulated fishery permit for shellfish. Any such permit, authorization, or regulated fishery for shellfish that may inadvertently or mistakenly be issued to you shall be null and void.

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 decision.

Regards,

David E. Pierce, PhD
Director

Recommended Final Decision
Docket Sheet

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

SUFFOLK, SS.

ADJUDICATORY PROCEEDING
DOCKET NO. SSW-172620-DM-17

IN THE MATTER OF:)
)
)

CHAD WHITTEMORE AND SHELLFISH-)
SEAWORMS PERMIT DMF ID #172620)
AND SHELLFISH TRANSACTION)
CARD,)

Respondent)
_____)

**NOTICE OF DEFAULT AND ENTRY
OF DEFAULT JUDGMENT**

I. BACKGROUND

On June 6, 2017, the Massachusetts Division of Marine Fisheries (“*Marine Fisheries*”) initiated this adjudicatory proceeding by filing a Notice of Claim. The Claim alleged that on March 27, 2017 Chad Whittemore (“respondent”) holder of shellfish and seaworm permit DMF ID No. 172620 violated G.L. c.130, §§52, 74, 75 and 322 CMR §§7.01 and 16.00 by possessing and transporting shellfish for commercial purposes that was harvested from a shellfish area in Gloucester classified by *Marine Fisheries* as PROHIBITED by contamination.

On June 23, 2017, a Notice of Immediate Permit Suspension and an Order to Show Cause was delivered by *Marine Fisheries* to respondent. On July 6, 2017, respondent filed a written request for an expedited hearing, a notice of appearance by counsel, and a request for production of documents. A pre-hearing conference was scheduled for and held on July 25, 2017. The hearing was continued by joint motion of the parties on three occasions in a good faith effort to settle some or all of the issues to be adjudicated. After much work the parties were unable to reach any accord. On December 21, 2017, a Notice establishing a hearing date of February 9, 2017, at 1:00 p.m. in the Hearings Room of the Department of Fish and Game, Suite 400, 251 Causeway Street, Boston, MA 02114 was delivered to respondent and respondent’s counsel. On January 16, 2018, counsel for respondent filed a notice of withdrawal from the case citing a breakdown in communications and discussions of a hearing strategy between counsel and respondent.

II. THE HEARING

The hearing was conducted on the above date and time. In attendance were agency representative, Daniel McKiernan, Environmental Police Officer Ryan Lennon, Gloucester Shellfish Constable Tammy Cominelli, *Marine Fisheries* staff Storey Reed and Jeff Kennedy, and the administrative law clerk Jared Silva. The respondent, Chad Whittemore, was not present. Neither the agency representative nor the clerk had received any written or oral communication from respondent. The hearing was electronically recorded and the record remained open in the event the respondent appeared.

After allowing a reasonable time for respondent to appear or to contact the clerk or agency representative asking for a continuance, respondent was found in Default, the hearing was adjourned, and the record was closed.¹

III. DECISION AND RECOMMENDATION

Respondent, *having been found in Default has 10 days from the date of delivery of this Notice in which to file a written motion requesting that the Default be set aside or vacated.* Should respondent fail to reply within this time the Clerk is hereby **ORDERED** to enter on the Docket Judgment by Default in favor of the claimant, *Marine Fisheries*, and against respondent, Chad Whittemore.

Should respondent fail to request that the Default be vacated as set forth above, the Clerk shall forward the docket sheet as well as the administrative record and electronic recording of this case to the Director of *Marine Fisheries* for the Director's Final Decision. This Notice and Order shall constitute my Recommended Final Decision for purposes of 801 CMR §1.01(n)(1).

The Director's Final Decision shall be based on the administrative record of this case, including this Notice and Order. The Director's Final Decision shall comply with the provisions of 801 CMR §1.01(10)(n)(2) including notification to respondent of his right to judicial review of the Final Decision in accordance with G.L. c.30A, §14.

Date 2/20/18

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

¹ See Docket #CCL-1892-LE (2016); *Matter of Fontancz*, Docket #SSW-171771-DM (2016); *Matter of Paine*, Docket #SPP-162579-KC (2015); *Matter of Mello*, Docket #CCP-1273-LE (2015); 801 CMR §§1.01(10)(n)(1) and 1.02(10)(n)(1).