



David E. Pierce  
Director

# Commonwealth of Massachusetts

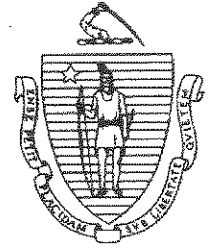
## Division of Marine Fisheries

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Charles D. Baker  
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Karyn E. Polito

Lieutenant Governor

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Secretary

George N. Peterson, Jr.

Commissioner

Mary-Lee King

Deputy Commissioner

January 4, 2016

Michael A. Mello, Jr.  
28 Stoney Beach Road  
Hull, MA 02114

Re: **Matter of Mello, Case No. CCP-1271-15-LE**  
**FINAL DECISION AND FINAL AGENCY ACTION**

Dear Mr. Mello:

Please find attached the Magistrates **FINAL DECISION** in the above referenced proceeding.

Upon review of the administrative record and after reading the Magistrates findings, conclusions and recommendation I have decided to adopt the **FINAL DECISION** in its entirety as my final decision in this matter.

The record in this case shows that you did not participate in the adjudicatory process, which is your right. At no stage of the process did you deny or otherwise challenge the charges brought against you by the Environmental Police. You did not appear on the day of your hearing notwithstanding earlier multiple continuances by your attorney. DMF received no written, electronic or oral communication regarding your absence at your hearing date and the Magistrate found you in default. Although you were provided with a written **NOTICE OF DEFAULT** you did not take advantage of the ten day period to request that it be set aside or vacated. Finally, you decided not to provide DMF with any comments whatsoever on the Magistrate's **RECOMMENDED DECISION** within the thirty day comment period. This record clearly shows a decision not to contest or otherwise defend against the charges brought by the Environmental Police.

Based on all of the above I have decided to revoke and not renew your coastal commercial lobster permit #162579 including all regulated fishery permit endorsements.

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 of my decision in a court of competent jurisdiction.

Regards,

A handwritten signature in cursive script, appearing to read "David E. Pierce".

David E. Pierce, Ph.D  
Director

**FINAL DECISION**

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING  
DOCKET NO. CCP-1273-15-LE

\_\_\_\_\_  
)  
*IN THE MATTER OF:* )  
)

MICHAEL A. MELLO, Jr. and COASTAL )  
COMMERCIAL LOBSTER PERMIT NO. )  
1273 INCLUDING ALL REGULATED )  
FISHERY PERMIT ENDORSEMENTS )  
\_\_\_\_\_)

**FINAL DECISION**

I. INTRODUCTION

This is a **FINAL DECISION** issued pursuant to G.L. c.30A, §§8 and 11 and 801 CMR §1.01(11)(d).

By Notice dated November 23, 2014 the Massachusetts Environmental Police (MEP) filed law enforcement reports with the Division of Marine Fisheries (agency) charging that Mr. Michael Mello (respondent) had been cited for multiple violations of the marine fishery laws of the Commonwealth and requested that the agency revoke the respondent's coastal commercial lobster permit #1273 with regulated fishery permit endorsements. By Order to Show Cause dated January 22, 2015, the agency notified the respondent of these charges and that a hearing date of February 27, 2015 had been set.

The respondent retained counsel, who in turn filed an appearance and moved for a continuance. Michelle A. Stanley intervened as a party-respondent based upon a first preferred ships mortgage that she held on the boat F/V *Hurricane* that was being used by the respondent. The hearing date was continued three separate times on motion of respondent's counsel to the date of June 16, 2015. Counsel's fourth request for a continuance was *conditionally* allowed for thirty days subject to counsel providing the agency with a date and time for his participation in a pre-hearing conference telephone call. Notwithstanding agency efforts to secure a date from the respondent's counsel for a pre-hearing conference telephone call, none was forthcoming.

On July 24, 2015 the respondent was served a **DEFAULT NOTICE** and allowed ten days in

which to file a motion to set aside or vacate the Default. No response was forthcoming. On September 13, 2015 the respondent was issued a **DEFAULT JUDGMENT** based on both the default and a finding that the respondent had made no attempt to either defend or participate in a hearing on the MEP charges.

On September 13, 2015 a **TENTATIVE DECISION** was issued. No written comments or objections to the **TENTATIVE DECISION** were filed by the respondent within the thirty-day period.

## II. THE RECORD

1. The respondents' counsel failed to comply with the June 11, 2015 conditional continuance by not providing the agency with a date and time when he would be available for the hearing or a pre-hearing conference.

2. At no time did the respondents' counsel provide the agency with a date and time for a pre-hearing telephone conference notwithstanding numerous agency inquiries and reminders.

3. The respondent did not comply with the fourth continuance condition.

4. Notwithstanding the agencies best efforts neither the respondent nor respondent's attorney notified the agency of their intentions.

5. MEP filed the following attachments to their Law Enforcement Reports and Request for an Adjudicatory Proceeding:

- Summons Report (14-'181-AR), September 19, 2014
- Massachusetts Environmental Police summary sheet
- Massachusetts Environmental Police Reports with photographs
  - A. Arrest Report (11-114-AR), September 10, 2011
  - B. Written Warning Citation (#109233), February 24, 2011
  - C. Summons Report (11-4-AR), January 15, 2011
  - D. Summons Report (10-87-AR), June 28, 2010
  - E. Verbal Warning (Callit09-11189), October 9, 2009
  - F. Civil Citation (#114265), July 10, 2008
  - G. Written Warning (#112486), July 9, 2008
- Massachusetts Environmental Police citations and other actions
  - A. Marine fishery citations (2008-present)

B. Other fishing activities (2008-present)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The respondent is the holder of a coastal commercial lobster permit DMF ID # 1273 with regulated fishery permit endorsements.

2. Beginning in 2008, Mr. Mello was afforded an incremental and graduated level of scrutiny and enforcement by MEP.

3. On or about September 14, 2014, Environmental Police Officers David Marrocco and Peter Gamache observed the respondent aboard the F/V *Hurricane* landing his catch at the Hull Town Dock.

4. The officers watched as six crates were transferred from the *Hurricane* to the dock by the respondent.

5. The officers inspected the crates and found them to contain lobsters.

6. The officers inspected the respondents' catch and found that 48 lobsters were in violation of the lobster management regulations of the agency codified at 322 CMR §§.

7. Of the 48 lobsters the officers inspected 39 measured less than the Lobster Management Area 1 minimum size limit of 3¼" in violation of G.L. c.130, §44 and 322 CMR §6.01(1)(a)1.

8. One lobster was larger than the Lobster Management Area 1 maximum size limit of 5" in violation of 322 CMR §6.01(1)(a)1.

9. One lobster was female that was mutilated in a manner that hides, obscures or obliterates the v-shaped notch in the flipper in violation of 322 CMR §6.02(3)(c).

10. Seven of the lobsters were female with a visible v-notch on their flipper in violation of 322 CMR §6.02(3)(e)(l).

III. DISCUSSION

The record of respondents' past history of fishing practices, at least going back as far as 2008, shows a developing pattern of non-compliance with the marine fishery conservation and management laws of the Commonwealth. It also shows that he has become increasingly more

uncooperative with the Environmental Police when they exercise their enforcement duties and responsibilities. As a condition of respondents' permit and as required by regulations of the agency each year he agrees to fully comply with Environmental Police and their procedures for inspections of his fishing permits, his catch, his catch reports, the location of his fishing and the gear used.<sup>1</sup>

The agency has issued the respondent a coastal commercial lobster permit in the limited entry lobster fishery and provided endorsements for authorization to participate in other regulated fisheries including authorization to harvest lobsters from Lobster Conservation and Management Area 1.<sup>2</sup> Over the years the respondent has developed a history of non-compliance with the marine fishery laws of the Commonwealth, in particular the laws governing the conservation and management of lobsters. What began as verbal warnings by MEP advanced to written warnings; to non-criminal citations; to criminal citations; to forfeitures; and ended in the past two years with arrests, criminal convictions and the seizure of his catches and trip harvests. The record shows that the respondent continues to violate the laws and regulations governing commercial fishing in general and lobster fishing in particular. His non-compliance with the numerous lobster conservation and management laws harms the resource and creates an uneven playing-field for those lobstermen who comply with these important resource protection requirements.

The record shows that the respondent has become defiant and belligerent towards law enforcement during past boardings and inspections. As such, MEP has had an increasingly difficult time accomplishing their responsibilities of policing a very large area of inland and coastal waters to inspect fishing vessels, fishing permits, catch reports, amount and species of fish on board and the fishing gear being used when Mr. Mello or other fishermen with similar attitudes are involved.

That the Legislature was concerned about the permitting of coastal commercial lobster fisherman and the conservation of the lobster resource is well known, especially to the participants.<sup>3</sup> The Legislature first established a moratorium on coastal commercial lobster

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<sup>1</sup> 322 CMR §1.01; 322 CMR §7.01(5)(g).

<sup>2</sup> The American lobster fishery is pervasively regulated pursuant to a plan developed and approved by the Atlantic States Marine Fisheries Commission and implemented by regulations adopted by the member states of which Massachusetts is one. <http://www.asmf.org/species/american-lobster>. See also G.L. c.130, App. §§1-4, and the relevant provisions of 322 CMR §6.00, et. seq.

<sup>3</sup> G.L. c.130, §§38-51

permits by an emergency act of 1975 and established the coastal commercial lobster fishery as a limited entry fishery.<sup>4</sup> The Legislative intent behind these actions was to ensure the “maintenance and stability of a healthy lobster population ... and the economic viability of lobstering as a vocation and way of life ...”<sup>5</sup> In addition, the Legislature provided that the Director may renew an existing coastal commercial lobster permit held by any “qualified” person during the previous year.<sup>6</sup> The dictionary states that to be qualified suggests requirements or limitations of some sort. In this context, a qualified lobster permit holder would be an individual who has the qualities looked for in such a vocation including personal integrity; cooperation with law enforcement; voluntary compliance with agency requirements for harvesting lobsters; involvement in the management process; respectful of the fishing gear set by others; appreciates the public nature of the resource and other lobstermen’s participation; has an intimate knowledge of the lobster fishery and its management; and understands that holding a coastal lobster permit is a privilege and not a right.

The Legislature intended that the qualities listed above would qualify an individual for a renewal of his or her coastal commercial lobster permit. Such fishermen seek to participate in the fishery on an equal footing with others. They are not predisposed to violate the conservation and management measures in order to increase their cash flow at the cost of a healthy resource and to the detriment of those fishermen who play by the rules.

Certainly fishermen who have developed a history or pattern of deliberate non-compliance and failure to cooperate with law enforcement would not be considered “qualified” in the Legislative sense. In the agency administrative sense the coastal commercial lobster permit of fishermen who have developed such a pattern of historical non-compliance have had their permit conditioned, restricted, suspended, revoked or not renewed. Where permit holder was aware of requirement of removing lobster traps from right whale critical habitat during the right whale season but knowingly failed to do so permit is subject to revocation. *Matter of Young*, #CCLP-7265-08-PH (2008). When permit holder’s violations are found to be egregious (landing 253 short lobsters) permit is subject to revocation. *Matter of Gozzo*, #LP-3932-08-GD (2008). Where permit holder of many years has developed a pattern of non-compliance with laws designed to conserve and manage the lobster resource permit is subject to revocation. *Matter of*

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<sup>4</sup> St.1975, c.484, §1; codified at G.L. c.130, §38B

<sup>5</sup> G.L. c.130, §38B

<sup>6</sup> *Id.*

*Merenda*, #BP-05350-08-KR (2009). When a permit holder has established a predisposition to violate lobster conservation and management measures permit is subject to revocation. *Matter of Le*, #CLP-6140-13-DM (2013). Where permit holder has shown failure to exercise due diligence when setting, maintaining and hauling lobster traps in the right whale critical habitat during right whale season permit is subject to revocation. *Matter of Tasha*, #CCLP-2284-13-DM (2015).

#### IV. RECOMMENDATION

Upon a complete review of this record, and for all the reasons set forth above, I recommend that coastal commercial lobster permit #1273 be revoked, not renewed and not otherwise approved for transfer.

Dated: 11/4/16

By: DC Hoover  
David C. Hoover, Esq.  
Administrative Law Magistrate