



David E. Pierce, Ph.D.
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Matthew A. Beaton
Secretary

George N. Peterson, Jr.
Commissioner

Mary-Lee King
Deputy Commissioner

August 17, 2016

Carlos A. Fontancz,
14 Roycraft Road,
Peabody, MA

Re: **Matter of Fontancz, Docket No. SSW-171771-16-DM**
FINAL DECISION AND FINAL AGENCY ACTION

Dear Mr. Fontancz:

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

Therefore, I have permanently revoked commercial shellfish permit ID #171771 including all regulated fishery permit endorsements, and the shellfish transaction card issued to you. The permit and transaction card will not be subject to renewal.

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 the Court within thirty days of receipt of this decision.

Regards,

A handwritten signature in black ink, appearing to read "David E. Pierce".

David E. Pierce, Ph.D.
Director

NOTICE

This Final Decision contains important information concerning the shellfish permit issued to you and action taken by *Marine Fisheries* regarding this permit. If you do not understand English as a first or second language please have this information translated for you.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING
DOCKET NO. SSW-171771-16-DM

IN THE MATTER OF:

CARLOS FONTANCZ and SHELLFISH)
and SEAWORMS PERMIT DMF ID#)
171771 and SHELLFISH TRANSACTION)
CARD)
_____)

**RECOMMENDED FINAL DECISION
JUDGMENT BY DEFAULT**

This is a Recommended Final Decision of the Magistrate in the above-captioned adjudicatory proceeding.

By Notice of Immediate Permit Suspension dated April 5, 2016 the Director of the Division of Marine Fisheries (*MarineFisheries*) exercised his authority to immediately suspend commercial shellfish and seaworms permit ID #71771 and shellfish transaction card issued to the respondent, Carlos A. Fontancz, **14 Roycraft Road Peabody, MA OR 4 Acorn Street, Lynn, MA 01901.**

This action was taken as necessary pursuant to the authority of G.L. c.130, §80 and 322 CMR §§7.01(9) and 16.06(1) to protect the general public, health welfare and safety from the threat of unknowingly consuming contaminated shellfish.

In addition to the Notice, *MarineFisheries* issued the respondent an Order to Show Cause also dated April 5, 2016 informing him of his right to a due process, evidentiary hearing before an impartial Administrative Law Magistrate to allow him the opportunity to challenge the charges contained in the law enforcement report of Massachusetts Environmental Police Officer (MEP) Lt. James Hennessey.

The **ORDER** notified the respondent that an expedited hearing had been scheduled for April 22, 2016 at 2:00 p.m. in the Hearings Room of the Massachusetts Department of Fish and Game, 251 Causeway Street, Suite 400, Boston, MA. Both the Notice and the

Order were received by the respondent on April 6, 2016.

The hearing took place as scheduled on April 22, 2016 in the Hearings Room of DFG at 2:00 p.m. The Administrative Law Clerk received no oral or written communication from the respondent, no answer, no appearance filed by an authorized representative and no request for a continuance.

The respondent was not present at the hearing. The hearing record remained open for approximately sixty minutes in order to provide the respondent additional time to appear or notify the Clerk. The respondent did not appear and did not notify the clerk to request a continuance. At approximately 3:00 p.m. on April 22, 2016 I found the respondent in default for failure to appear and defend and the hearing was concluded.

On July 5, 2016 a Notice of Default was served on the respondent. The Notice of Default informed the respondent that he had ten days to file a written request or motion with the Clerk asking that his Default be set aside or vacated. The Clerk has received no such written or oral communication from the respondent.

CONCLUSION AND RECOMMENDATION

In conclusion, the administrative record in this case shows that the respondent did not appear at the hearing or seek to have his default set aside. At no stage of the proceeding did respondent file an answer, an appearance, deny or otherwise challenge the charges filed by MEP. At no time has the Clerk received any written, electronic or oral communication from the respondent. This record clearly shows a decision on the part of the respondent not to contest, defend or otherwise adjudicate the charges filed by MEP, which is his right.

Based on all the above, I am recommending that the Clerk enter Judgment by Default on the Docket and that the Director revoke the shellfish and seaworms permit ID #171771 and the shellfish transaction card issued to respondent, and that this permit and card not be renewed.

Dated: 8/15/16

By: DC Hoover

David C. Hoover, Esq.
Administrative Law Magistrate