



Paul J. Diodati
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February 13, 2009

NOTICE OF FINAL AGENCY ACTION

Aristides Melo Cuoto
155 Winston Street
New Bedford, MA 02745-3613

In Re: Aristides Melo Cuoto and Wholesale Dealer Permit #8924,
With Endorsements; Docket No. WDP-8924-08-PH

Dear Mr. Cuoto:

Upon my review of the entire record in the above captioned Adjudicatory Proceeding, and the Default Judgment that was entered against you for your failure to appear at the proceeding, I have decided not to renew your Wholesale Dealer Permit #8924 with endorsements. The permit that you presently hold in the name "Steves Filet" was issued by this agency in December 2008 by mistake, without my authorization and is therefore null and void. You are hereby directed to surrender that permit to any Environmental Police Officer upon request. This agency will refund any money you paid for this void permit.

My decision constitutes final agency action for purposes of G.L. c.30A, §14. You have thirty days from your receipt of this **NOTICE OF FINAL AGENCY ACTION** to seek judicial review of my decision pursuant to G.L. c.30A, §14.

Paul J. Diodati
Sincerely,

Paul J. Diodati
Director

cc: Capt. Peter Hanlon

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING
DOCKET NO. WDP-8924-08-PH

IN RE ARISTIDES MELO
CUOTO and WHOLESALE
DEALER PERMIT # 8924
WITH ENDORSEMENTS

FINAL DECISION

I. INTRODUCTION

By letter dated June 16, 2008 Captain Peter J. Hanlon of the Massachusetts Environmental Police (MEP) requested that the wholesale dealer permit #8924, including endorsements, issued to Aristides Melo Cuoto, d/b/a Steve's Filet, Inc., 155 Winston Street, New Bedford be permanently suspended or revoked for violations of 322 CMR §7.07(5) and 322 CMR §6.22(3)(d). On July 2, 2008 the Director of the Massachusetts Division of Marine Fisheries (*Marine Fisheries*) appointed a Presiding Officer and requested that a hearing in this matter be conducted. An adjudicatory proceeding was scheduled for August 4, 2008. On July 22, 2008 at 12:20 pm a Notice of Adjudicatory Proceeding and Order to Show Cause dated July 18, 2008 was delivered, along with the Law Enforcement Report and attachments, by Federal Express to Aristides Melo Cuoto, 155 Winston Street, New Bedford, MA.

The scheduled proceeding was held on August 4, 2008. In attendance were the petitioner Captain Peter J. Hanlon and MEP Officer James Cullen. Neither the respondent, Aristides Melo Cuoto nor an attorney or authorized representative for the respondent was present. The Law Enforcement with attachments was accepted into evidence. The proceeding remained open for thirty minutes, at which time the respondent was defaulted and the proceeding closed.

II. FINDINGS OF FACT

1. A Notice of Adjudicatory Proceeding and Order to Show Cause dated July 18, 2008 was delivered by Federal Express on July 22, 2008 to Aristides Melo Cuoto, at 155 Winston Street, New Bedford, MA.

2. A Notice of Default dated August 25, 2008 was sent by first class mail, postage prepaid to Aristides Melo Cuoto, at 155 Winston Street, New Bedford, MA.

3. Shortly thereafter I received a telephone call from an individual who identified himself as Aristides Melo Cuoto's son, explaining that his father was in jail and asking what he should do about the Notice of Default.

4. I told this individual that he, a family member, an attorney or any person authorized by his father should send a written request to remove the default to the Presiding Officer at the address shown on the Notice.

5. No such written request was filed or otherwise received.

6. The Default Judgment which shows a date "09/02/09" is a typographical error and incorrect.

7. The correct date is "09/02/08" and should have been typed on the Default Judgment.

8. The Default Judgment was sent by first class mail, postage prepaid to Aristides Melo Cuoto, at 155 Winston Street, New Bedford, MA.

9. I find the contents of the MEP Narrative for EPO James Cullen to be factually correct.

10. I find the contents of the MEP Law Enforcement Report of Officer James Cullen to be factually correct.

11. Aristides Melo Cuoto is a wholesale fish dealer d/b/a Steve's Filet at the Green and Wood Pier in New Bedford, MA.

12. Aristides Melo Cuoto had previously been issued a written citation by MEP Captain Peter J. Hanlon for not maintaining, keeping and producing accurate records of his purchases of summer flounder.

13. On April 5, 2008 Aristides Melo Cuoto accepted and purchased 150 pounds of summer flounder in excess of the 500 pound quota established by 322 CMR

§6.22(2)(b)(2).

14. On April 5, 2008 Aristides Melo Cuoto accepted and purchased summer flounder at 9:00 pm, one hour after the *Marine Fisheries* regulatory window.

15. On April 5, 2008, at 9:00 pm the F/V BONANZA was tied to the Green and Wood Pier in New Bedford, MA, offloading summer flounder in excess of 500 pounds that was caught by nets onto a chute directly into the wholesale business location of Aristides Melo Cuoto, d/b/a Steve's Filet.

16. Summer flounder is a species of fish that is quota managed by specific possession limits adopted by *Marine Fisheries* based on state-by-state quotas established by the Atlantic States Marine Fisheries Commission (ASMFC).

17. Massachusetts receives 6.8% of the annual commercial summer flounder quota established by ASMFC.

II. CONCLUSIONS OF LAW

1. It is a violation of 322 CMR §§7.07(5)(a) and (c) for a wholesale fish dealer to accept or purchase any species of fish in excess of that species' specific possession limit, or in violation of that species regulatory window established by *Marine Fisheries'* regulation.

2. It is a violation of 322 CMR §6.22(2)(g) for a wholesale fish dealer to accept or purchase summer flounder within the summer flounder regulatory window of 8:00 pm to 6:00 am.

3. It is a violation of 322 CMR §6.22(3)(e) for a wholesale fish dealer to accept or purchase summer flounder in excess of 500 pounds between February 1 through April 22.

III. DISCUSSION

The respondent, Aristides Melo Cuoto, does not comply with *Marine Fisheries'* regulations that seek to manage a mere 6.8% share of the overall annual quota for summer flounder established by the interstate management plan for summer flounder approved by the ASMFC. The cornerstone of any successful quota managed system for

approved by the ASMFC. The cornerstone of any successful quota managed system for interstate fisheries, particularly those with such a small quota is timely and accurate reporting, and voluntary compliance with the management measures by both fishermen and wholesale dealers. It does not take much to exceed such a small daily quota of 500 pounds for all of Massachusetts within a short three month commercial fishery. It is imperative that all wholesale dealers in Massachusetts who are licensed by *Marine Fisheries* not only comply with summer flounder management measures, but send a clear message to the fishermen they purchase this species from as well: don't bring in more than 500 pounds; if you do, don't expect me to take it off your hands, conceal it and fail to report.

The dealer has the greatest effect on the Commonwealth's ability to comply with ASMFC's interstate management plan for summer flounder. It is their responsibility to see to it that there is no market for summer flounder harvested in excess of the quota, or in the dark of night. Dealers are an essential partner with MEP to insure that fishermen harvest no more than the quota. It is, therefore, important that all licensed dealers play by the rules, comply with the management measures, stay informed about regulatory changes, closures and amended landing restrictions. Open lines of communication between MEP, the dealers and *Marine Fisheries*, is essential to the success of a quota managed fisheries and achieving the ASMFC's interstate summer flounder fishery management plan conservation goals. Open communication is not served when dealers fail to open their mail, disregard its contents if opened, or fail to notify *Marine Fisheries* of an address change, move, extended leave or travel.


IV. RECOMMENDATION

The record is clear. The respondent was charged with violating rules governing the quota managed summer flounder fishery. The respondent was given notice of an adjudicatory proceeding allowing him or his authorized representative the opportunity to provide a defense. The Informal Rules of Adjudicatory Practice and Procedure allow the respondent or his authorized representative to present a written defense to the charges in lieu of making an appearance at the proceeding. The respondent, however, chose neither

alternative, deciding instead to not appear, to not file a written defense, or to not authorizing a representative to do so on his behalf.

G.L. c.130, §80 and 322 CMR §7.01(9) authorizes the Director of *Marine Fisheries* to suspend or revoke any permit issued by him for violations of the marine fishery laws of the Commonwealth. In addition, the Director is authorized to not renew any permit issued by him should the holder violate the marine fishery laws of the Commonwealth. Given that it is close to the end of the 2008 fishing season and that the permit renewal period will begin shortly, The Director may decide not to renew wholesale dealer permit #8924 with endorsements.

Dated: November 5, 2008

By 
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Administrative Law Magistrate
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