



Paul J. Diodati  
Director

Commonwealth of  
Massachusetts  
Division of Marine Fisheries  
251 Causeway Street, Suite 400  
Boston, Massachusetts 02114

(617)626-1520  
fax (617)626-1509



Deval Patrick  
Governor

Ian A. Bowles  
Secretary

Mary B. Griffin  
Commissioner

May 8, 2009

**NOTICE OF FINAL AGENCY ACTION**

Carmelo Merenda  
1½ Trask Street  
Gloucester, MA 01930

c/o

Stephen M. Ouellette, Es.  
127 Eastern Avenue  
Gloucester, MA 01930

*RE: In Re Carmelo Merenda and Boat Permit DMF ID. No. 05350, Including all  
Authorizations; Adjudicatory Proceeding, Docket No. BP-05350-08-KR*

Dear Mr. Merenda:

Upon my review of the entire record in the above captioned Adjudicatory Proceeding, I concur with and adopt the Findings of Fact and Conclusions of Law set forth by the Administrative Law Magistrate in the attached Final Decision dated May 1, 2009. Based upon my review of this record, including your written comments and objections filed on April 1, 2009, I have decided to revoke your boat permit #7265.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Diodati", written over a horizontal line.

Paul J. Diodati  
Director

Final Decision Enclosed

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING  
DOCKET NO. BP-053530-08-KR

\_\_\_\_\_)  
IN RE CARMELO MERENDA and )  
BOAT PERMIT #4460, DMF ID No. )  
053530 WITH ENDORSEMENTS, )  
Respondent )  
\_\_\_\_\_)

**FINAL DECISION**

I. INTRODUCTION

Under authority of G.L. c.130, §80 and 322 CMR §7.01(9), and in accordance with G.L. c.30A, §13 and 801 CMR §1.01 an Adjudicatory Proceeding was scheduled for October 20, 2008 to determine whether boat permit, DMF ID No. 053530 and all applicable endorsements issued by the Director of the Division of Marine Fisheries ("*Marine Fisheries*") to Carmelo Merenda should be conditioned, suspended, revoked or not renewed for violations of the marine fishery laws of the Commonwealth.

The respondent requested and was given a two-week continuance and the proceeding was held on November 8, 2008 at the offices of the Department of Fish and Game, 251 Causeway Street, Boston, MA. In attendance were Officers Keith Robinson, and Michael Powers of the Massachusetts Environmental Police, the respondent Carmelo Merenda and his attorney, Stephen Ouellette, as well as Roberto Cassan, an Italian interpreter provided by *Marine Fisheries*. All witnesses and the interpreter were sworn in.

Prior to a decision in the above-captioned proceeding, Attorney Stephen Ouellette requested by letter dated and faxed to *Marine Fisheries* on February 24, 2009, that the respondents boat permit be renewed during the permit renewal period. The Director of *Marine Fisheries* renewed the respondent's boat permit based on this request. On March 5, 2009 a Tentative Decision was issued. Pursuant to 801 CMR §1.01(11)(c)1, both parties had thirty-days in which to file written changes, additions, deletions, objections and comments to the Tentative Decision. On March 23, 2009, approximately thirteen

days prior to the expiration of the thirty-day comment period I prematurely issued a Final Decision on March 23, 2009. Based on the Final Decision the Director of *Marine Fisheries* took final agency action by letter dated March 26, 2009. On April 1, 2009 the respondent filed his written comments to the Tentative Decision which were received within the 30-day comment period. In response to the respondent's filing I vacated the March 23, 2009 Final Decision and the Director rescinded his final agency action. See **Notice Vacating Final Decision**, April 3, 2009; and **Notice of Rescinded Final Agency Action**, April 3, 2009. The respondent's written comments became part of the record of this proceeding.

Having heard the testimony, studied the demeanor of the witnesses, and reviewed all of the evidence presented at the hearing, including consideration of the respondent's written comments to the Tentative Decision, I hereby issue this **FINAL DECISION**.

## II. FINDINGS OF FACT

1. The respondent, Carmelo Merenda, is a Gloucester fisherman and the holder of boat permit #04460, DMF No. 053530 which identifies him as a gillnetter in the groundfish fishery using a 1963, 36' fishing boat.

2. Mr. Merenda is 62 years old, arrived in the United States from Italy in 1966, and became a naturalized citizen.

3. Mr. Merenda's occupation since coming to the United States has been working as a commercial fisherman.

4. Mr. Merenda relies on commercial fishing to support himself and his wife.

5. Mr. Merenda had a formal education only through the 3<sup>rd</sup> grade, and he has some difficulty with the English language.

6. Mr. Merenda is aware of the need to remain in compliance with marine fishery laws.

7. Mr. Merenda has a daughter, formally educated in the United States who has no such limitations with the English language; she helps by reviewing the marine fishery laws with him, and on occasion accompanies him on his boat to help make sure he is in compliance with such laws.



8. On June 19, 2008, at approximately 0850 hrs. Officers Keith Robinson and Michael Powers of the Massachusetts Environmental Police (MEP) departed from Pier 3 in Charlestown aboard MEP patrol boat 3103 to investigate a complaint received by their supervising Officer Lt. Gary Duncan.

9. The complaint concerned a blue Novi hulled vessel that was being operated in a closed groundfish area in the vicinity of Saturday Night Ledge.

10. When MEP patrol boat 3103 arrived in the vicinity of Saturday Night Ledge the Officers observed several gillnetters fishing south of the 42° 30 line<sup>1</sup>. The Officers boarded two gillnetters in these waters and found no fishery violations.

11. MEP patrol boat 3103 then approached the F/V SUSANNA C, a blue Novi hulled fishing vessel, MS 5297 AP, with an unpainted plywood wheelhouse, and observed two crew members and the captain/operator, who they later identified as Carmelo Merenda, the Respondent.

12. Officer Robinson identified himself and boarded the F/V SUSANNA.

13. Officer Powers remained aboard MEP patrol boat 3103 and using its Global Positioning System (GPS) took a GPS reading of the F/V SUSANNA's location finding it to be at a position 42° 31.176 N, 070° 42.285 W.

14. The F/V SUSANNA was located in those Massachusetts waters north of the 42° 30 line that are closed to the taking of groundfish, including Atlantic cod, windowpane flounder, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, white hake, and redfish, by means of a gillnet from April 1 through June 30.

15. Roy Didion, a crew member aboard the F/V SUSANNA said to Officer Robinson that they had just left Gloucester harbor to haul their gear and, pointing to a high flyer<sup>2</sup> in the water approximately 180-200 yards away said, "that's our gear."

16. At approximately 0915 hrs. Officer Robinson, aboard the F/V SUSANNA, and Officer powers aboard MEP patrol boat 3103 reached the highflyer that crewmember Didion had pointed to.

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<sup>1</sup> All Massachusetts waters north of the 42° 30 line to the New Hampshire border are closed to the use of gillnets to fish for groundfish.

<sup>2</sup> High Flyers are long poles affixed with a radar beacon and fluorescent flag attached to a buoy which can be seen visually or with the use of radar by fishermen using mobile gear far enough away so as to avoid conflict or contact by the mobile gear with the fixed gillnet.

17. At this location of what turned out to be the high flyer marking the east end of a gillnet Officer Powers took a GPS reading finding it to be at a position 42° 31.123 N, 070° 42.292 W.

18. The high flyer was attached to a white buoy with the number 4460 written in black, which in turn was attached to the east end of a gillnet.<sup>3</sup>

19. The respondent told Officer Robinson that his gear was properly set.

20. The respondent admitted to Officer Robinson that this gillnet was his, and the number 4464 on the white buoy was also his social security number.

21. The respondent told Officer Robinson that he thought his other 12 gillnets which had been set in the same area had been intentionally severed from their high flyers and buoys by an unknown local fisherman during that week, and despite using a grapple he was unable to find them.

22. When asked by Officer Robinson about his gillnet's breakaway<sup>4</sup> features, the respondent went to the wheelhouse and returned with a white plastic swivel, to which Officer Robinson replied, "it should be on your gear, not your boat."

23. The respondent, with help from his crew began hauling his gillnet aboard the F/V SUSANNA culling the fish from the net as they went along and, in accordance with Officer Robinson's directions, keeping all fish taken from the net on board the F/V SUSANNA.

24. At approximately 1025 hrs. when they reached the high flyer marking the west end of the gillnet Officer Powers took a GPS reading of that location finding it to be at a position 42° 31.073 N, 070° 42.870 W.

25. The gillnet with its east and west end high flyers were located in those Massachusetts waters north of the 42° 30 line that are closed to the taking of any groundfish by means of a gillnet from April 1 through June 30.

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<sup>3</sup> Gillnets are vertical walls of webbing, whether anchored or drifting, buoyed on the top and weighted on the bottom to remain in an upright position designed to capture fish by entanglement, gilling, or wedging.

<sup>4</sup> During his testimony Officer Robinson made reference to large whales, including the northern right whale which frequent Massachusetts waters in the spring, and his Police Report made reference to "ALWTRP" an acronym for the Atlantic Large Whale Take Reduction Plan. The Plan and Massachusetts law requires that all gillnets used in Massachusetts waters have so-called breakaway features which are designed in such a way that a gillnet will break off of a large whale should one come in contact with it.



26. When the entire gillnet had been hauled aboard and all the fish culled under the observation of Officer Robinson, the F/V SUSANNA was escorted back to Gloucester by MEP patrol boat 3103. When both vessels had come to a stop just off the end of the break wall of Eastern Point Light in Gloucester Harbor, Officer Powers confirmed that the GPS unit which he had been using was operating correctly when he took a reading of the present location of the MEP patrol boat 3103 and the F/V SUSANNA at a position of 42° 35.031 N 070° 40.345 W, or precisely .08 nautical miles off the break wall.

27. Officers Robinson and Powers processed approximately 2,137 lbs. of groundfish that had been culled from the respondent's gillnet aboard the F/V SUSANNA.

28. The respondent's gillnet was measured out to be approximately 4,200 feet in length. This is almost double the maximum length of 2,400 feet allowed to be fished in Massachusetts waters.

29. There were no breakaway features on any part of the respondent's gillnet or his buoy lines.

30. The respondent's gillnet did not have a knot-less "weak link" at the buoy connection having a breaking strength of 600 lbs.; it had no weak links with a breaking strength of up to 1,100 lbs. installed in the float rope between net panels; nor did it have an anchoring system comprised of either dead weights weighing at least 50 lbs, or anchors with the holding power of at least 22 lbs. (a/k/a a Danforth anchor), or a lead-line weighing at least 100 lbs. per 300 ft. for each net panel in the gillnet string.

31. Officers Robinson and Powers removed each individual panel of the respondent's gillnet and placed them in large burlap bags which were numbered. This process resulted in 14 large burlap bags.

32. The number 4460 written in black on the white buoy is the last four digits of the respondent's social security number and constitutes the respondent's boat permit number.

33. The high flyer marking the east end of respondent's gillnet was not affixed with the standard 12-inch tetrahedral corner radar reflector, and its anchor system consisted of individual weights and chains used in old window sashes that were secured together by black electrical tape found to weigh weighing approximately 17 pounds.

34. The high flyer marking the west end of the respondent's gillnet did not have a flag, it was not affixed with the standard 12-inch tetrahedral corner radar reflector, and its anchor system weight was found to be less than 16 lbs.

35. There is no evidence whatsoever that the regulatory requirement of a standard 12-inch tetrahedral corner radar reflector affixed to the high flyer marking the west end of a gillnet is not or was not enforced by MEP, or that *Marine Fisheries* or its Director made any written or verbal communication to the effect that this requirement is not or will not be enforced.

36. The respondent's gillnet did not have an anchoring system of either dead weights of at least 50 lbs; or anchors with the holding power of at least 22 lbs. (also known as a Danforth anchor); or lead-line weighing at least 100 lbs., per 300 ft. for each net panel in the gillnet string.

### III. CONCLUSIONS OF LAW

1. On June 19, 2008, the respondent violated 322 CMR §4.13(3)(a) by using a gillnet the high flyers of which were not marked with a standard 12-inch tetrahedral corner radar reflector.

2. On June 19, 2008, the respondent violated 322 CMR §4.13(4) by using a gillnet the total continuous length of which exceeded 2,400 feet from end to end of the entire net set in waters under the jurisdiction of the Commonwealth.

3. On June 19, 2008 the respondent, a commercial fisherman, violated 322 CMR §8.12(3) by possessing or fishing for regulated groundfish species within the waters under the jurisdiction of the Commonwealth north of the 42° 30' line to the Massachusetts/New Hampshire border between the period April 1 through June 30.

4. On June 19, 2008, the respondent violated 322 CMR §12.05(1) by fishing with a gillnet in waters under the jurisdiction of the Commonwealth which was not rigged with a knot-less weak link at the buoy with a breaking strength of 600 lbs.

5. On June 19, 2008, the respondent violated 322 CMR §12.05(2) by fishing with a gillnet in waters under the jurisdiction of the Commonwealth which was not rigged with weak links with a breaking strength of up to 1,100 lbs. installed in the float rope between net panels.



6. On June 19, 2008, the respondent violated 322 CMR §12.05(1)(a) by fishing with a gillnet in waters under the jurisdiction of the Commonwealth which did not have an anchoring system rigged to each end of the gillnet that has either: (a) dead weights weighing at least 50 lbs.; (b) anchors with the holding power of at least 22 lbs. ( a/k/a Danforth anchor; or (c) lead-line weighing at least 100 lbs. per 300 ft. for each net panel in the string.

7. Pursuant to 322 CMR §7.01(5)(g), the respondent's signature on his permit application constitutes a statement that the applicant and all individuals conducting the activity under authority of the permit have read and are familiar with all applicable statutes contained in G.L. c.130, all applicable regulations contained in 322 CMR and agree to fully comply therewith.

#### IV. DISCUSSION

The respondent is a 62 year old fisherman who immigrated to the United States at the age of 11. Although he has some degree of difficulty with the English language it is difficult to determine precisely how much. It was clear however at the hearing that his use of, or need for the interpreter diminished with time. Officer Robinson appeared to have little difficulty understanding what Mr. Merenda was communicating. Mr. Merenda has been living in this country for over 50 years which has given him an opportunity to develop a foundation for communicating in English and assimilating the English language into his life. His daughter who was formally schooled in the country helps him in this regard. Notwithstanding the complexity of marine fishery laws, while the English language may be difficult for Mr. Merenda, given these facts I'm unable to find that it is in any sense a barrier to his understanding and complying with these laws. He is able to understand what type of fishing gear is required, the lawful use of that gear, the areas where that gear may be fished, the species of fish which may be taken including the size and quantities, and the additional conservation measures that are required of fishermen to insure the protection of endangered whales.

The groundfish fishery is regulated by both federal and state managers. The regulations have no doubt become increasingly more complex and onerous. In addition to the complexities of groundfish management measures, regulations protecting endangered whales by requiring fixed gear to have certain breakaway features require constant



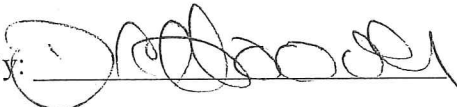
attention and due-diligence by fixed gear fishermen. The respondent, like all other fishermen, must learn to comply with these new conservation and management measures no matter how difficult they become.

*Marine Fisheries* is charged with the significant responsibility of conserving and managing marine fisheries, marine mammals and endangered species that are found in coastal waters. Likewise, commercial fishermen have the significant responsibility of being constantly aware, knowledgeable, and understanding of these conservation and management measures, particularly those that govern their individual fishing activities, and take the necessary steps to adhere to them. The respondent's actions and inactions establish the fact that he is either unwilling or unable due to factors other than language to comply with these demanding requirements.

#### V. CONCLUSION

The Director of *Marine Fisheries* has the authority and, based on this record may, condition, suspend or revoke boat permit # 4460, DMF ID No. 053530.

Dated: May 1, 2009

By: 

David C. Hoover, Esq.  
Administrative Law Magistrate  
Department of Fish and Game  
251 Causeway Street, Suite 400