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September 3, 2003

Paul William Kaufman, Esq.
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RE: Final Decision- Adjudicatory Proceedings LP-12-02 - PH and LP-13-PH
In Re: Douglas Randall and Coastal Commercial Lobster Permit No. 1163
In Re: Sharon Randall and Coastal Commercial Lobster Permit No. 2478

Dear Mr. Kaufman:

I have reviewed the record in the above-referenced adjudicatory proceedings, and concur with the enclosed Final Decision. Based on the findings of fact and conclusions of law contained in the Final Decision, I have decided that coastal commercial lobster permit #1163 issued to Douglas Randall will not be renewed; and that coastal commercial lobster permit #2478 issued to Sharon Randall will not be renewed.

This constitutes a final agency decision in these matters. Pursuant to G.L. c.30A, §14 you may seek judicial review of these actions.

Very truly yours,

Paul J. Diodati
Director

Enc.

Cc: Lt. Peter Hanlon

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING
DOCKET NO. LP - 12 - 02 - PH
DOCKET NO. LP - 13 - 02 - PH

IN RE DOUGLAS RANDALL AND
COASTAL COMMERCIAL LOBSTER
PERMIT NO. 1163, AND OFFSHORE.
COMMERCIAL LOBSTER PERMIT
NO. 1163,

AND

IN RE SHARON RANDALL AND
COASTAL COMMERCIAL
LOBSTER PERMIT No. 2478

FINAL DECISION

In accordance with G.L. c.30A, §13, the above-captioned adjudicatory proceedings were heard on April 22, 2003. This is a Final Decision issued pursuant to 8.01 CMR § 1.01(10)(n)1. The parties have thirty (30) days from receipt of this Final Decision to file for judicial review pursuant to G.L. c.30A, §14.

HAVING REVIEWED ALL THE EVIDENCE, HEARD ALL THE TESTIMONY, AND READ ALL OF THE PLEADINGS INCLUDING THE RESPONDENT'S WRITTEN COMMENTS, OBJECTIONS AND ARGUMENTS RELATIVE TO THE TENTATIVE DECISION, I HEREBY FIND THE FOLLOWING FACTS, AND MAKE THE FOLLOWING RULINGS OF LAW.

FINDINGS OF FACT

1. Douglas Randall, P.O Box 48, Brant Rock, MA was the holder of a 2002 coastal lobster permit #1163 issued by the Massachusetts Division of Marine Fisheries (DMF). (Ex. #2).

2. Douglas Randall's coastal lobster permit #1163 lists his buoy colors as red and yellow, his boat name as Sea Princess with a length of 36' and his homeport as unknown. (Ex. #2)
3. Douglas Randall was also the holder of a 2002 offshore lobster permit #1163 issued by DMF. (Ex. #3).
4. Douglas Randall's offshore lobster permit lists his boat name as Sea Princess with a length of 48' and his homeport as unknown. (Ex. #3).
5. Sharon Randall, P.O. Box 458, Brant Rock, MA is the holder of a 2002 coastal lobster permit #2478 issued by DMF. (Ex. #4). (Ex. #4).
6. Sharon Randall's coastal lobster permit #2478 lists her buoy colors as red and yellow, her boat name as Sea Princess with a length of 16' and her homeport as Green Harbor. (Ex. #4).
7. By Order to Show Cause dated 12/9/02 Douglas Randall was notified that his coastal lobster permit #1163 and his offshore lobster permit #1163 would not be renewed pending an adjudicatory proceeding. (Ex. #26).
8. By Order to Show Cause date 12/9/02 Sharon Randall was notified that her coastal lobster permit #2478 would not be renewed pending an adjudicatory proceeding. (Ex. #26A).
9. DMF has established by regulation a fishing zone within the upper Cape Cod whiting area known as the "Fixed Gear-Free Zone." (Ex. #5; 322 CMR. (Ex. #8A and 8B).
10. The purpose of the whiting area's Fixed Gear-Free Zone is to assure unhindered access by trawlers fishing for whiting in an area free of fixed fishing gear. Because state law prohibits damage to fixed gear by trawlers, whiting trawl boats are forced out of areas occupied by fixed gear. The creation of this fixed gear free area is critical to the economic viability of the fall whiting fishery whose trawl fleet depends on access to the whiting resource. (Ex. #8A and 8B).
11. DMF has prohibited the setting of any lobster traps within the whiting area's Fixed Gear-Free Zone during the months of September and October of each year. (322 CMR §8.14(1)(c); Ex. #8A and 8B).

12. The whiting area's Fixed Gear-Free Zone is an area that is formed using the Loran C coordinates beginning at the intersection of the 9960-W-13880 line with the state/federal territorial seas line; then following in a southeast direction along the aforementioned 13880 line to the intersection with the 9960-Y-44100 line; then in a northeast direction following the aforementioned 44100 line to the intersection with Loran C 9960-Y-44120 line; then in a northeasterly direction along the 44120 line to the intersection with the 9960-W-13830 line; then in a northwest direction following the 13830 line to the state/federal waters line; then in a westerly direction back to the origin at the intersection of the 9960-W-13880 line and the state/federal territorial sea line. (322 CMR §8.14(1)(c); Ex. #8A and 8B).
13. A lobster pot and a lobster trap are the same device used to catch lobsters. (Adm. Notice).
14. By mailing dated August 28, 2002, Douglas Randall and Sharon Randall were notified by DMF that the setting of any lobster traps within the whiting area's Fixed Gear-Free Zone during September and October was unlawful, that there would be increased enforcement of the area and that violations would result in the suspension of coastal commercial lobster permits. (Ex. #8A, 8B and 8C).
15. On September 14, 2002, Lieutenant Peter Hanlon and Officer William Costello of the Massachusetts Environmental Police were on patrol within the whiting area's Fixed Gear-Free Zone. Using a Raytheon 35C Global Position System Lieutenant Hanlon plotted lobster gear that was set at the following four separate positions within the whiting area's Fixed Gear-Free Zone: (a) 42 04.99 – 70 21.881; (b) 42 05245 – 70 22.246; (c) 42 05.351 – 70 22.164; and (d) 42 06.159 -70 22.281. (Ex. #9; testimony of Lieutenant Hanlon).
16. Upon inspection of the lobster gear set at these four positions within the whiting area's Fixed Gear-Free Zone Lieutenant Hanlon found that lobster buoys were branded only with the letters "F/V SeaPr". None of the lobster buoys were branded with the lobster permit number of the owner. Lieutenant Hanlon also found that some of the lobster buoys had a red and yellow color scheme while other white lobster buoys had no color scheme at all. (Ex. #9; testimony of Lieutenant Hanlon).

17. On September 14, 2002, Lieutenant Robert Chausse and Officer Edward Johnson of the Massachusetts Environmental Police were on patrol within the whiting area's Fixed Gear-Free Zone. Lieutenant Chausse found and plotted lobster gear that was set at the following five separate coordinates within the whiting area's Fixed Gear-Free Zone: (a) 42° 06.542 minutes North, 70° 22.55 minutes West; (b) 42° 06.044 minutes North, 70° 22.575 minutes West; (c) 42° 06.126 minutes North, 70° 22.770 minutes West; (d) 42° 06.452 minutes North, 70° 20.35 minutes West; and (e) 42° 06.356 minutes North, 70° 22.864 minutes West. (Ex. #5, 5A, 10, 10A and 10B; testimony of Lieutenant Chausse).
18. Upon inspection of the lobster gear set within the whiting area's Fixed Gear-Free Zone Lieutenant Chausse further found that the lobster buoys had a red and yellow color scheme and were marked with coastal lobster permit #1163. One buoy was white with no color scheme and had no coastal lobster permit number markings. (Ex. #5 and 5A; testimony of Lieutenant Chausse).
19. Lieutenant Chausse also found that the lobster buoys set within the whiting area's Fixed Gear-Free Zone at position 42° 06.356 minutes North, 70° 22.864 minutes West had a red and yellow color scheme and were marked with the coastal lobster permit #2478. (Ex. #5, 5A, 10, 10A, 10B and 14; testimony of Lieutenant Chausse).
20. On September 21, 2002 Lieutenant Robert Chausse and Officer Norman Saucier of the Massachusetts Environmental Police were on patrol in the whiting area's Fixed Gear-Free Zone. Lieutenant Chausse found and plotted lobster gear that was set within the whiting area's Fixed Gear-Free Zone at the following coordinate: (a) 42° 06.044 minutes North, 70° 22.575 minutes West. (Ex. #5, 5A, 10, 10A, 10B and 14; testimony of Lieutenant Chausse).
21. Upon inspection of the lobster gear set within the whiting area's Fixed Gear-Free Zone Lieutenant Chausse found that the lobster buoys had a red and yellow color scheme and marked with the coastal lobster permit #1163. (Ex. #14B; testimony of Lieutenant Chausse).
22. On September 23, 2002 Sergeant Wilton Gray, Officer Robert Ingemi and Officer Michael Powers of the Massachusetts Environmental Police were on patrol within

- the whiting area's Fixed Gear-Free Zone. Sergeant Gray found and plotted lobster gear that was set at position 42° 06.42 minutes North , 70° 23.1 minutes West within the Fixed Gear-Free Zone. (Ex. #10, 10A, 10B and 11; testimony of Sergeant Gray).
23. Upon inspection of the lobster gear set at this position Sergeant Gray found lobster buoys with a red and yellow color scheme that were not branded with the lobster permit number of the owner. One of the lobster buoys was white with no color scheme at all. (Ex. #11; testimony of Sergeant Gray).
24. Sergeant Gray hauled 9 lobster traps attached by line to the red and yellow buoys found at this position. The first seven lobster traps as well as the ninth each had an orange identification tag with the marking "T 2478", and a white trap tag with the marking "1163 MA/EEZ 02". The eighth lobster trap had an orange identification tag with the marking "W. Picken 1541", and a white trap tag with the marking "1163 MA/EEZ 02". (Ex. #11; testimony of Sergeant Gray).
25. The lobster gear, which includes lobster buoys, high flyers, trawl line and lobster traps that was found and plotted by Lieutenant Hanlon, Lieutenant Chausse and Sergeant Gray was set in the whiting area's Fixed Gear-Free Zone during September 2002, and were marked with Douglas Randall's coastal lobster permit #1163 and Sharon Randall's coastal lobster permit #2478. (Ex. #2, 4, 10, 10A, 10B, 11, 14A and 14B; testimony of Lieutenant Hanlon, Lieutenant Chausse and Sergeant Gray).
26. Douglas Randall and Sharon Randall set lobster traps within the Fixed Gear-Free Zone in the month of September 2002. (Ex. #10, 10A and 10B; testimony of Lieutenant Hanlon, Lieutenant Chausse and Sergeant Gray).
27. Douglas Randall and Sharon Randall used lobster buoys that were not marked with their coastal lobster permit number. (Ex. #2, 4, 5, 5A, 9 and 11; testimony of Lieutenant Hanlon, Lieutenant Chausse and Sergeant Gray).
28. Douglas Randall and Sharon Randall used lobster buoys that were not marked with their selected red and yellow color scheme as approved by DMF and contained in their coastal lobster permit.

29. Douglas Randall was using the lobster trap of another person, William Picken, without that person's consent. (Ex #11; testimony of Sergeant Gray).

CONCLUSIONS OF LAW

1. It is unlawful to set, store or abandon lobster traps during the months of September and October within the Fixed Gear-Free Zone. (322 CMR §8.14(1)(c)).
2. It is unlawful to violate any provision of 322 CMR when conducting any activity authorized by a coastal or offshore lobster permit. (322 CMR §7.01(13)(f)).
3. Holders of a coastal and offshore lobster permit agree that they, and any individuals conducting activities pursuant to their permit, have read and are familiar with all applicable regulations contained in 322 CMR and agree to fully comply with such regulations. (322 CMR §7.01(6)(g)(2)).
4. Douglas Randall and Sharon Randall violated the provisions of 322 CMR §8.14(1)(c).
5. Coastal and offshore lobster permits held by any person found to have violated the provisions of 322 CMR §8.14(1)(c) may be revoked, suspended or not renewed by the DMF Director. (G.L. c.130, §80; 322 CMR §7.01(9)).

Dated: 8/26/03

By: David C. Hoover
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