



David E. Pierce
Director

Commonwealth of Massachusetts

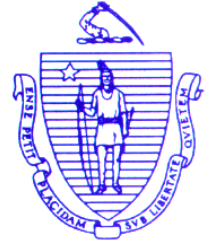
Division of Marine Fisheries

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Charles D. Baker
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Ronald Amidon
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August 21, 2019

James Santapaola
16 Forest Lane
Gloucester, MA 01930

Re: *Matter of Santapaola*, Docket No. CLP-178-DM-18

FINAL DECISION

Dear Mr. Santapaola,

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

Therefore, it is my decision to permanently revoke your commercial coastal lobster permit DMF ID No. 178. You may not apply for, hold or otherwise be issued any permit or authorization to fish for lobsters by trap. Any such permit or authorization, that may inadvertently or mistakenly be issued to you shall be null and void.

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 Superior Court within thirty days of receipt of this **FINAL DECISION**.

Sincerely Yours,

A handwritten signature in blue ink that reads "David E. Pierce".

David E. Pierce, PhD
Director

Attachments:

Recommended Final Decision
Docket Sheet

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF FISH AND GAME
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING
DOCKET NO. CLP-178-DM-18

IN THE MATTER OF:

JAMES SANTAPAOLA, JR and
COMMERCIAL COASTAL LOBSTER
PERMIT #178 and ALL APPURTENANT
REGULATED FISHERY PERMIT
ENDORSEMENTS,

Respondent

RECOMMENDED FINAL DECISION

INTRODUCTION

This is a Recommended Final Decision (“Decision”) of the Magistrate. It is issued in accordance with the provisions of G.L. c.30A, §11 and 801 CMR §1.01(11). A Tentative Decision that contained Administrative Notice of public records, documents, government internet sites, and scientific and biological information relevant to the lobster resource and its conservation and management preceded it.¹

An adjudicatory proceeding was initiated by the Division of Marine Fisheries (“agency”) based on the contents of Law Enforcement Report #18-232-AR (“LER”) and the Claim for an Adjudicatory Proceeding. The LER contained charges filed by Massachusetts Environmental Police Officer (“MEP”) Ryan Lennon (“Officer Lennon”) against Mr. James Santapaola, Jr. (“respondent”). The charges arose from a joint investigation conducted by MEP Officer Lennon of the Massachusetts Office of Law Enforcement (“OLE”) and Officer Jason Berthiaume of the

¹ G.L. c.30A, §11(5) provides in relevant part that administrative notice may be taken of “any fact which may be judicially noticed by the courts, and in addition, may take notice of general, technical or scientific facts within their specialized knowledge.”

National Oceanic and Atmospheric Administration (“NOAA”), Office of Law Enforcement into the fishing activities of respondent on the dates October 24 and 29, and November 1 and 2, 2018.²

On January 17, 2019 an adjudicatory hearing was conducted in accordance with the due process requirements of G.L. c.30A, §11, and pursuant to the Standard Rules of Adjudicatory Practice and Procedure at 801 CMR 1.00, et. seq. In attendance were the respondent and respondent’s authorized representative Dawn Emery, agency representative Daniel McKiernan, Officer Ryan Lennon and administrative law clerk Jared Silva. The witnesses, Officer Lennon and Dawn Emery, were administered the oath. An electronic recording was made of the hearing.

Respondent exercised his right not to testify and no inference has been drawn from this. Respondent’s authorized representative testified on his behalf. The authorized representative also cross-examined and re-crossed Officer Lennon, as well as making a closing statement.

BACKGROUND

On November 11, 2016 MEP charged respondent with multiple violations of the lobster conservation and management laws of the Commonwealth.³ The charges alleged respondent with possession of one-hundred and forty-four (144) lobsters less than the minimum size limit; thirty-seven (37) v-notched female lobsters; and two (2) egg-bearing. The agency initiated an adjudicatory proceeding. After conferencing by the parties, the agency representative and respondent filed a written settlement agreement pursuant to 801 CMR §1.01(10)(a) on May 16, 2017. The agreement was reviewed and included in the Recommended Final Decision. On May 30, 2017, the Director of the Division of Marine Fisheries (“DMF Director”) adopted the Recommended Final Decision and, in accordance with the settlement agreement, suspended respondent’s coastal commercial lobster permit for three months - from June 11, 2017 through September 10, 2017.⁴

² MEP is within the Office of Law Enforcement of the Massachusetts Executive Office of Energy and Environmental Affairs. G.L. c.21A. NOAA, the National Oceanic and Atmospheric Administration, is an agency of the United States Department of Commerce. The law enforcement agencies of MEP and NOAA work together to cooperatively enforce lobster conservation and management laws within both state and federal waters. See <https://www.fisheries.noaa.gov/topic/enforcement>. MEP Officers and NOAA Officers are cross-deputized to enforce the laws of both sovereigns. G.L. c.21A, §10A, and §311(a) and (b) of the Magnuson-Stevens Fisheries Conservation and Management Act of 1976, 16 U.S.C. §1801, et. seq.

³ G.L. c.130, §§37- 39, 41- 41A, 43- 44, 48A-48B, 50; 322 CMR §§4.13, 6.02, 6.12-6.14, 6.25-6.26, 6.31.

⁴ *Matter of Santapaola, Jr.*, CCLP-178-DM (2017).

FINDINGS OF FACT

Based on the testimony of the witnesses, LER report #18-232-AR, scientific reports, biological reports, lobster stock assessments, and exhibits entered into evidence at the hearing, I hereby find the following facts:

1. Respondent is a commercial fishermen engaged in the coastal lobster fishery as authorized by coastal commercial lobster permit DMF ID #178, with appurtenant regulated fishery special permit endorsements including that for Lobster Management Area 1.⁵
2. Gloucester Harbor in Massachusetts is respondent's designated homeport, the location where he off-loads his lobster catch and moors his boat the F/V *Shearwater*.⁶
3. The F/V *Shearwater* is a 38' fiberglass fishing boat outfitted for the commercial hauling of lobster trap gear and is a federally documented commercial fishing vessel #573593.⁷
4. The American lobster (*Homarus Americanus*) is managed by the Atlantic States Marine Fisheries Commission ("ASMFC") pursuant to their Interstate Fishery Management Plan and amendments I through XXIV ("lobster plan").
5. The conservation and management measures contained in the lobster plan are implemented and enforced in the northeast by coastal state members, including Massachusetts, within state coastal waters.
6. The ASMFC also makes recommendations to NOAA Fisheries to implement and enforce lobster conservation and management measures that are complimentary to the lobster plan within federal waters.⁸
7. The lobster fishery is the principle fishery in the Commonwealth from an economic, cultural, and coastal fishing community standpoint.
8. The two primary stocks of lobster in New England waters are the Southern New England ("SNE") stock, and the larger Gulf of Maine ("GOM") stock.

⁵ Agency Exhibit's A and B. Testimony of Officer Lennon.

⁶ *Id.*

⁷ Agency Exhibit A.

⁸ Facts 4-6 are found in the Atlantic Coastal Fisheries Cooperative Management Act of 1993, 16 U.S.C. §5101, et seq., as amended. See also *Ad.Notice* - <http://www.asmfc.org/>.

9. The smaller SNE stock has experienced a significant decline from severe depletion, with recent record low abundance showing poor prospects of a recovery.⁹

10. The larger GOM stock is at a record high abundance, however, low numbers showing up in recent young of the year surveys may be pointing to recruitment failure within the next three to five years.¹⁰

11. In 1975, the Commonwealth enacted legislation imposing a system of limited entry on the coastal commercial lobster fishery by providing for the renewal and transfer of existing permits and prohibiting the issuance of new coastal commercial lobster permits.¹¹

12. Lobster conservation and management is a complex regulatory environment where the ASMFC's Lobster Board is an amalgamation of multiple independent regulatory agencies representing eleven (11) states and two (2) federal agencies have their own legislative, administrative and law enforcement process and procedures that govern how it implements the lobster conservation and management measures developed by the ASMFC.¹²

13. In 1999 DMF adopted regulations implementing ASMFC's Amendment 3 and Addendum 1 to the lobster plan by establishing six LMA's from to each LMA having specific management measures.¹³

14. Multiple complaints received by MEP reported unlawful commercial lobster activities taking place in the coastal waters around Gloucester and Cape Ann.

15. Based on these complaints, MEP and NOAA Law Enforcement identified the F/V *Shearwater* and its operator, James Santapaola, Jr., as a potential subject of interest in possessing undersized lobsters and failing to report his lobster landings to NOAA Fisheries.

16. Officer Lennon is familiar with respondent from previous lobster fishery incidents.¹⁴

17. In 2018, the F/V *Shearwater* held a federal fishing permit No. 230295, authorized for the federal multi-species fishery, including lobsters.¹⁵

⁹ *Ad.Notic*e - https://www.mass.gov/files/documents/2016/08/wi/southern-ne-lobster-presentation-052710.pdf?_ga=2.22685435.1163653869.1556037396-244270356.1556037396; <https://www.mass.gov/service-details/american-lobster-research-and-monitoring>; <http://www.asmfc.org/species/american-lobster>.

¹⁰ *Id.*

¹¹ G.L. c.130, §38B.

¹² ASMFC Fishery Management Report No. 29, Amendment 3 to the Interstate Fishery Management Plan For American Lobster (1997). *Ad.Notic*e, <http://www.asmfc.org/uploads/file/lobsterAmendment3.pdf>.

¹³ G.L. c.130, §§21 and 44. 322 CMR §6.33.

¹⁴ Testimony of Officer Lennon. Agency Exhibit D.

¹⁵ Appendix to Agency Exhibit B.

18. Federal regulations require all federally permitted fishing vessel owners to submit vessel trip reports (“VTR”) prior to landing or off-loading their catch.¹⁶

19. Officer Lennon searched NOAA Fisheries’ VTR database and found that respondent had not been submitting lobster trip reports.¹⁷

20. Based on the results of this initial investigation Officer’s Lennon and Berthiaume conducted a joint state-federal marine fishery surveillance of respondent’s fishing activities in the Gloucester area over a four-day period in late October and early November, 2018.

21. Early and continuous surveillance of Gloucester Harbor by both officers confirmed that respondent docked the F/V *Shearwater* at a location in Gloucester Harbor commonly referred to as ‘the railways’, and that respondent drove a pick-up truck with MA. Reg. 64KC27.

22. On October 24, 2018, Officer Lennon located in Gloucester Harbor determined that respondent was at sea fishing based on his observations that respondent’s truck was parked at the railways and the F/V *Shearwater* was not at its mooring.

23. On October 29, 2018, Officer Lennon was again located in Gloucester Harbor and determined that respondent was at sea fishing based on his observations that respondent’s truck was parked at the railways and that the F/V *Shearwater* was not at its mooring location.

24. Officer Lennon remained in Gloucester Harbor for several hours on October 29, 2018 during which time respondent’s F/V *Shearwater* did not return to the Harbor.

25. On November 1, 2018, at approximately 4:30 p.m., Officer Lennon positioned his marked cruiser at a concealed location with a view of Gloucester Harbor and observed the F/V *Shearwater* returning to the Harbor.

26. From his position, Officer Lennon identified respondent at the back of the F/V *Shearwater* placing lobsters into a container as the vessel continued under power into the Harbor.

27. Officer Lennon repositioned his marked cruiser to observe respondent secure the F/V *Shearwater* to the dock at the railways, walk to his truck (MA Reg. 64KC27) and drive out of the area without unloading the lobsters that he observed respondent placing into a container.

28. Officer Lennon continued his observations for approximately forty-five minutes but did not see respondent offload any lobsters from the F/V *Shearwater*.

¹⁶ 50 CFR §648. *AdNotice* - https://www.greateratlantic.fisheries.noaa.gov/aps/evtr/vtr_inst.pdf

¹⁷ Testimony of Officer Lennon.

29. Based on his training and experience, Officer Lennon believed that this was not the usual practice of a commercial lobsterman and suspected that respondent was leaving his catch of lobsters in a ‘lobster car’ which was suspended in the harbor water and secured to a fixed object or location.¹⁸

30. At approximately 12:00 p.m. on the following day, Officer’s Lennon and Berthiaume, in plain clothes and an unmarked NOAA cruiser, resumed their patrols and surveillance of the Gloucester Harbor area.

31. Both officers paid particular attention to the spot where they had previously observed respondent dock the F/V *Shearwater*.

32. Officer Berthiaume located and observed three crates of lobsters suspended in the water and secured to the F/V *Captain Novello* at the same spot where both officers had previously observed respondent dock the F/V *Shearwater*.

33. Based on their combined training and experience, both law officers believed that these crates were the lobster cars that respondent had placed in that spot on the previous day.¹⁹

34. Officer Lennon returned to his MEP cruiser and positioned himself at the end of the State Fish Pier to observe the harbor.

35. At approximately 2:30 p.m., Officer Lennon observed the F/V *Shearwater* return to Gloucester Harbor and head directly to the Railways at which time he repositioned his MEP cruiser directly across from the harbor.

36. From his new location, Officer Lennon observed respondent with the assistance of other individuals’ haul several fishing crates from the harbor onto the dock and loaded them into respondent’s truck (MA Reg. 64KC27).

37. At this same moment, Officer Berthiaume positioned his unmarked NOAA cruiser at the Railways where he too was able to observe respondent and these individuals loading lobster crates from the harbor into respondents truck (MA Reg. 64KC27).

38. Officer Lennon drove his MEP cruiser over to the Railways, pulled in just as

¹⁸ 322 CMR §6.14(1) defines a “lobster car” as any container, crate or other container or contrivance designed to hold and store lobsters. G.L. c. 130, §1, provides that a “car” is used for keeping fish (lobsters) alive. Using a lobster car in this way serves three functions. First, it prevents the lobsters already caught from escaping; second, it conceals the catch of lobsters from open view; and third, it maintains the lobster’s survivability in the seawater. This particular practice is well known to law enforcement to hide non-compliant lobsters from MEP and has been the subject of a number of adjudicatory proceedings. See Law Enforcement Report #15-86-AR in *Matter of Sanfilippo*, Docket No.CCL-9885-CB (2016). *Matter of Thong Le*, Docket No.CCLP-6140-DM (2013).

¹⁹ The terms “crates” and “cars” are used interchangeably here.

respondent began to drive away, exited his cruiser, displayed his law enforcement badge and identified himself as a Massachusetts Environmental Police Officer.

39. At this same moment, Officer Berthiaume approached respondent and identified himself as a NOAA Law Enforcement Officer.

40. Officer Lennon asked respondent what was in the crates to which respondent replied "lobsters".

41. Officer Lennon informed respondent that both officers would be conducting a marine fisheries inspection, and removed five (5) full crates and one (1) fishing tote from respondent's truck.

42. Before beginning the marine fisheries inspection of the contents of the crates, Officer Lennon saw that the three crates, which he had observed in the harbor water previously secured to another fishing vessel, were no longer there.

43. Respondent stated that three of the crates were the same three that Officer Berthiaume had observed submerged in the harbor water previously.

44. Officer Lennon estimated the total amount of lobsters in the three crates to be approximately five to six hundred (500-600) pounds.²⁰

45. Using MEP calibrated lobster-measuring gauge Officer Lennon gauged the carapace length of each lobster and determined that respondent was in possession of:

(a) twenty-eight (28) lobsters smaller than the minimum legal size limit of three and a quarter inches (3¼"); and

(b) three (3) lobsters larger than the maximum legal size of five inches (5").

46. Officers Lennon and Berthiaume measured each lobster twice.

47. After a careful observation of the flippers of each lobster, Officer Lennon determined that respondent was in possession of sixteen (16) female lobsters with a v-shaped notch in the base of the flipper.

CONCLUSIONS OF LAW

1. It is a violation of 322 CMR §6.02(2)(b)(1) for a commercial fisherman authorized to fish in LMA 1 to possess a lobster with a carapace length smaller than three and a quarter inches (3¼").

²⁰ Officer Lennon testified that one crate holds approximately one-hundred to one hundred and twenty-five (100-125) pounds of lobster.

2. It is a violation of 322 CMR §6.02(2)(b)(1) for a commercial fisherman authorized to fish in LMA 1 to possess a lobster with a carapace length larger than five inches (5").

3. It is a violation of 322 CMR §6.02(5)(e)(1) for a commercial fisherman authorized to fish in LMA 1 to possess any female lobster bearing a v-shaped notch in the base of the flipper that is of any size.

DISCUSSION

The authorized representative cross-examined Officer Lennon and questioned the documents that the agency entered into evidence. I allowed wide latitude in her cross-examination. Her questions of Officer Lennon covered the marine fishery inspection that was conducted on November 2, 2018; the manner in which he measured the lobsters; how many times he measured each lobster; the number of past violations of respondent; the accuracy of the photographs; and the authority of the DMF Director to revoke commercial fishing permits issued by him.

From her line of inquiry on the issue of past violations, I granted what was in essence respondent's motion to strike the officer's testimony regarding OLE documentation of past violations for the year 2006, including relevant portions of agency exhibit D listing past violations for the year 2006. The appropriate portion of the officer's testimony was also deleted from the electronic recording. The agency representative did not object.

In addition, respondent's representative testified as a witness on his behalf. She attributed the results of the November 2, 2018 marine fishery inspection of respondent's catch to a series of mobile phone calls between herself and respondent while he was at sea fishing on that date. She called and asked him to return to the harbor as quickly as possible and drive her to the hospital where her adult daughter had delivered her baby three days earlier. Respondent told her that he had "one last trawl" to finish after which he would return to port.

At no point in her testimony did she provide any evidence to rebut or contradict the results of the November 2, 2018 marine fishery inspection conducted by Officer's Lennon and Berthiaume of respondent's lobster catch. To be sure, the representative acknowledged the violations when she attributed them to her calling respondent and asking that he hurry back. The representative testified that in a rush to finish hauling his last trawl, respondent did not do a careful job of measuring the lobsters. There is nothing in her testimony or summation that rises

to the level of a defense to the charges brought by MEP against respondent or to the issues for adjudication in this proceeding.²¹

The inference representative asks be drawn from her testimony is that respondent was in a such hurry to get back to Gloucester Harbor and drive his wife to the hospital that he completed hauling his last string of traps as quickly as possible paying little or no attention to the lobster regulations.²² The representative concluded by stating, “it’s all my fault.” Representative’s testimony does not relieve or excuse respondent’s violations. The couple’s situation is understandable, both financially with the loss of many of his traps to vandalism and emotionally having suffered the pain of losing a child to illness. However, the representative who is not involved with the fishing practices or activities of respondent cannot, in fact or in law, be held accountable for the lobster fishery violations that remain his and his alone.²³

Other than the Massachusetts State Police, MEP Office of Law Enforcement is the only other statewide, armed, uniformed law enforcement agency with full police powers to enforce all penal laws of the Commonwealth. Unique to MEP is their broad search authority given their natural resource responsibilities. MEP’s enabling statutes focus on all the environmental laws and many of the public health, welfare, and safety laws of the Commonwealth.²⁴ MEP expends considerable time and resources as a member of the ASMFC’s Law Enforcement Committee. The Environmental Police conduct on-land and at sea enforcement of a multiplicity of marine fishery laws throughout Massachusetts’ coastal waters, internal waters, harbors, ports, bays and inlets. In addition, they are responsible for the titling, registration, safety and safe operation of

²¹ The representative made repeated reference to documents that would corroborate her testimony of the events that she testified to. However, she had not brought any supporting items with her to the hearing. Even if the representative produced documents to corroborate her testimony such as her mobile phone records, hospital records, the auto repair shop, or the cost of supplies to build new traps, such an evidentiary foundation would not address the results of the November 2 inspection of respondent’s catch.

²² The representative stated that respondent would never again willfully violate the lobster laws after his earlier violations in 2017 resulted in the vandalism of his lobster trap gear by unknown persons who cut his trawl lines from their surface buoys.

²³ G.L. c.130, §1 speaks directly to the issue of who may be considered legally responsible for a marine fishery violation. It reads in relevant part: “A person who knowingly counsels, aids or assists in a violation of any provision of this chapter or of any rule or regulation made thereunder or knowingly shares in any of the proceeds of said violation by receiving or possessing fish, shall be deemed to have incurred the penalties imposed thereby upon the person guilty of such violation.”

²⁴ The MEP Office of Law Enforcement is an agency of the Massachusetts Executive Office of Energy and Environmental Affairs. G.L. c.21A, §§10A-11. The Office of Law Enforcement is composed of one advisory board and six bureaus, including the Coastal (commercial and recreational fishing) Bureau; the Inland (fishing and hunting) Bureau; the Marine Theft Bureau; the Environmental Crimes Bureau; The Boat and Watercraft Registration and Titling Bureau; and the Boat and Watercraft Safety Bureau.

boats and personal watercraft in Massachusetts. MEP provides boating and watercraft safety courses, as well as hunter education courses. They are responsible for locating lost and stolen boats, and are the lead agency for boating accident investigations. MEP patrol boats are an important public presence on the waterways enforcing boating safety and boating under the influence laws.²⁵

Environmental Police Officers are routinely present at the larger fish piers in the commercial fishing ports of New Bedford, Fairhaven, Gloucester, Sandwich, and Provincetown to inspect fishing permits, fishing gear, and catch. Officers also inspect retail and wholesale dealer locations to ensure sanitary conditions and seafood product. Indeed, MEP is responsible for protecting the public health, welfare, and safety from consuming shellfish illegally harvested from contaminated coastal areas by enforcing the National Shellfish Sanitation Program's regulations implemented by the Commonwealth.²⁶

MEP's time and resources are significantly impacted when they are required to divert their attention from their many other duties and responsibilities to conduct investigations and surveillance into illegal fishing activities. Anything short of voluntary compliance by fishermen impedes MEP's ability to complete their other important work in the Commonwealth.

The intentional violation of lobster conservation and management laws, on a consistent basis, and on a scale as large as this produces a ripple effect for fishery management, law enforcement, the commercial lobster industry, and the lobster resource. There is a subtle impact on the conservation ethic displayed by other fishermen, especially the new and inexperienced, and those similarly situated financially.²⁷ Moreover, there is a negative effect on the fishing

²⁵ The Commonwealth's boating under the influence laws are codified at G.L. c.90B.

²⁶ 322 CMR 16.00.

²⁷ *Matter of Young*, Docket No.CCLP-7265 (2008) ("where respondent lobster fisherman worked in various capacities including fishing aboard [other] boats ... as well as repairing and upgrading the fishing gear for those boats. He ... is recently divorced; has two children who live with their mother; and pays monthly child support. Although the respondent did not provide any detailed accounting of his financial situation it was apparent from his testimony that the divorce had forced him to locate a new residence, and created financial obligations that he was finding difficult to meet. The respondent was quite aware of his responsibility to remove his lobster gear from waters of Cape Cod Bay's right whale critical habitat. He was also quite aware of his responsibility to pay the bills - both his and his children's. On more than one occasion, the respondent's testimony focused on his inability to take care of both responsibilities at the same time, and he was "doing the best that he could. It was clear that the respondent had to work as often and as long as possible to make money to meet his financial obligations. It was equally clear that this meant he did not have the time or energy to haul all of his lobster gear out of the waters of Cape Cod Bay - a time consuming, labor intensive effort that would not, in and of itself earn him any financial return whatsoever. Unfortunately, the respondent's personal and financial difficulties, obligations, and

community itself - in this instance Gloucester and Cape Ann. The continuous nature of the violations exasperates the attitudes and behaviors of the local lobstermen who are then known to “take the law into their own hands”.²⁸

Respondent’ coastal commercial lobster permit authorizes him to harvest lobsters from the GOM stock in LMA 1. Conservation and management measures that apply in LMA 1 are designed to increase slowly a higher ratio of female lobsters within the GOM stock biomass. LMA 1 regulations include a gradual increase in the legal size of lobsters, identifying female lobsters by cutting a small v-notch in their tail, and prohibiting the possession of larger male lobsters.

The American lobster resource is subject to comprehensive regulation throughout its range. The SNE stock of lobsters in LMA 2 have experienced a sharp decline over the past fifteen years notwithstanding the conservation and management efforts of ASMFC and the northeast Atlantic coastal state members. Lobster stock assessments taken by DMF and other northeast states continue on a regular basis. The ASMFC relies on the stock assessments, including other on-going lobster biological studies, to determine specific management measures necessary for the recovery of the SNE stock and the continued sustainability of the GOM stock. The ASMFC works to ensure that the collapse of the SNE stock not translate into a similar fate for the continued sustainability of the GOM stocks.²⁹

The lobster fishery is uniquely cultural in many of the local fishing communities up and down the Massachusetts seacoast. Its economic value to the Commonwealth cannot be overstated. The ASMFC, northeast member States, and NOAA Fisheries closely monitor the resource, and design and re-design conservation and management measures. The lobster plan contains provisions that update stock indicators annually and address them with appropriate measures.³⁰

responsibilities however serious are not an excuse for his failure to meet the resource and conservation obligations and responsibilities that come with the requirements of having a lobster permit.” *Id.*, pp. 6-7.

²⁸ *Matter of Thong Le*, Docket No.CCLP-6140-DM (2013) (Angry fishermen in vigilante fashion can be known to cut holes in the fishing vessel of a repeat offender of the lobster laws scuttling or sinking his boat at its mooring). See Director’s Affidavit, *Sea Rover Fishing, Inc., and others v. Paul Diodati*, Suff.Sup.Ct., No.08-1106-BLS2, August 7, 2008 (long history of violence and conflict in Cape Cod Bay between hand gear and purse-seine fishermen both seeking the same valuable but scarce giant Atlantic bluefin tuna).

²⁹ <https://www.mass.gov/service-details/american-lobster-research-and-monitoring>.

³⁰ <http://www.asmfc.org/uploads/file/lobsterAmendment3.pdf>.

Significant and repeated violations negatively affect the lobster resource and the industry that depends on a continually sustainable stock.³¹ Repeated violations by the same fishermen contribute to a compliance disincentive for other fishermen. It leads to the loss of an offender's trap gear by other lobstermen in the same fishery who cut the buoy lines that sink the attached trap trawls. Repeat or serious offenders may even experience the loss of their fishing vessel by the illegal act of scuttling the boat.³² Allowing respondent to continue to participate in the lobster fishery would not reform his fishing practices or address the vandalism and potential for violence in the Gloucester and Cape Ann area.

Finally, the General Court and Governor expressed their view on the serious nature of possessing short lobsters or female lobsters in the form of amendments to the fines and penalties. Recent legislation signed into law provides the following:

“For the first offense ... a fine of not less than one hundred nor more than five hundred dollars for every such lobster and for a subsequent offense by a fine of not less than five hundred nor more than one thousand dollars for every such lobster or by imprisonment for not less than one nor more than three months or both”. G.L. c.130, §44.

CONCLUSION

MEP received numerous complaints from sources in the Gloucester, Cape Ann area there were significant violations of lobster regulations taking place. Officer Lennon determined that respondent was a possible person of interest. He knew that respondent fished out of Gloucester Harbor and had a history of possessing undersized and female lobsters. Respondent was known to Officer Lennon based on past violations of the lobster regulations.³³ Based on this knowledge, a joint surveillance of Gloucester Harbor by MEP and NOAA law enforcement began on October 24, 2018. On November 1, 2018, Officer Lennon observed the F/V *Shearwater* enter Gloucester Harbor. Officer Lennon observed respondent on the stern of the *Shearwater* placing lobsters in a crate. Officer Lennon did not see respondent off-load any lobsters onto the pier or into his truck. At that time, both officers conducted a search of the harbor area and located what they both believed to be respondent's three crates of lobsters submerged in the harbor water and secured to another fishing vessel.

³¹ Agency Request to Initiate an Adjudicatory Proceeding, Docket item number 1.

³² *Matter of Thong Le*, Docket No.CCLP-6140-DM (2013) (Angry fishermen in vigilante fashion can be known to cut holes in the fishing vessel of a repeat offender of the lobster laws scuttling or sinking his boat at its mooring).

³³ *Matter of Santapaola Jr.*, Docket No.CCL-178-DM (2017).

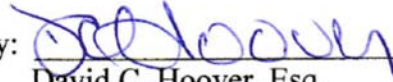
On November 2, 2018 both officers returned to Gloucester Harbor just as respondent loaded crates of lobsters onto his truck and was about to depart. Both officers conducted a marine fishery inspection of the lobsters in respondent's possession. Based on the results of the inspection, respondent was arrested by Officer Lennon and charged with multiple counts of violating the provisions of 322 CMR §6.02. The results of the inspection are not in dispute. No credible evidence was submitted on respondent's behalf to deny, rebut or contradict the results of the lobster catch inspection.

Respondent has not overcome the preponderance of the credible evidence submitted by the agency which support the findings in this case. I conclude that the agency has carried its burden of proof. On November 2, 2019 respondent possessed twenty-eight lobsters smaller than the legal minimum size of three and a quarter inches (3¼"); three lobsters larger than the legal maximum size of five inches (5"); and sixteen female lobsters with a v-notch on their flipper in violation of 322 CMR §§6.02(2)(b)(1) and 6.02(5)(e)(1).³⁴


RECOMMENDATION


Based on all of the above, my recommendation is that the Director revoke and not renew coastal commercial lobster permit DMF ID No.178.

Dated: August 10, 2019

By: 
David C. Hoover, Esq.
Administrative Law Magistrate
Department of Fish and Game

³⁴ See *Medical Malpractice Joint Underwriting Association of Massachusetts v. Commissioner of Insurance*, 395 Mass. 43 (1985). *Doe v. Sex Offender Registry Board*, 428 Mass. 90 (1998).

Adjudicatory Proceeding DOCKET		Docket No: CLP-179-DM-18		Department of Fish and Game Division of Marine Fisheries			
Hearing Caption: <i>In the Matter of James Santapaola, Jr and Commercial Coastal Lobster Permit #178 and All Appurtenant Regulated Fishery Permit Endorsements</i>				Division of Marine Fisheries 251 Causeway Street Hearing Room Suite 400 Boston, MA 02114 (617) 626-1520			
Date Filed: November 11, 2018		Date Disposed: August 21, 2019					
Petitioner: Daniel J. McKiernan, Deputy Director MA Division of Marine Fisheries 251 Causeway Street, Suite 400 Boston, MA 02114				Petitioners Attorney:			
Respondent: James Santapaola, Jr. 16 Forest Lane Gloucester, MA 01930				Respondents Attorney:			
NO.	Entry Date	Docket Entries					
1	11/20/18	Request for an Adjudicatory Proceeding					
2	11/23/18	Order to Show Cause					
3	11/27/18	UPS Notification of Delivery					
4	12/18/18	Magistrate's Decision on Respondents Request for a Continuance					
5	12/20/18	UPS Notification of Delivery					
Page 1 of 2	A TRUE COPY ATTEST	Adjudicatory Proceedings Clerk: X Jared A. Silva (signed electronically)				Date: 8/21/19	

Adjudicatory Proceeding DOCKET		Docket No: CLP-178-DM-18		Department of Fish and Game Division of Marine Fisheries 	
NO.	Entry Date	Docket Entries			
6	5/29/19	Tentative Decision			
7	5/30/19	Notification of UPS Delivery			
8	8/12/19	Recommended Final Decision			
9	8/21/19	Final Decision			
Page 2 of 2	A TRUE COPY ATTEST	Adjudicatory Proceedings Clerk: X Jared A. Silva (signed electronically)			Date: 8/21/19

SERVICE LIST

Matter of James Santapaola Jr – Commercial Coastal Lobster Permit DMF ID #178 and
All Appurtenant Regulated Fishery Endorsements

DOCKET NO. CLP-178-DM-18

1. **Final Decision**
2. **Recommended Final Decision**
3. **Docket Sheet**

The above documents sent UPS Second Day Mail

Attest: 

Jared Silva, Administrative Law Clerk
Division of Marine Fisheries
Administrative Law Section
251 Causeway Street, Suite 400
Boston, MA 02114

Date: 8/21/19

PARTIES

Agency

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