

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING  
DOCKET NO. LP - 14 - 02 - WG  
DOCKET NO. LP - 15 - 03 - WG

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IN RE: PETER C. PICKEN, AND )  
COASTAL COMMERCIAL LOBSTER )  
PERMIT NO. 1541 )  
AND )  
IN RE: WILLIAM L. PICKEN, AND )  
COASTAL COMMERCIAL LOBSTER )  
PERMIT NO. 7892 )

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**FINAL DECISION**

Having reviewed the physical evidence, heard the testimony of the witnesses at the proceeding, and read all of the pleadings and documents filed by the parties, I hereby find the following facts, and make the following conclusions of law pursuant to 801 CMR 1.01 (10(n)(2)).

FINDINGS OF FACT

1. Peter C. Picken of 108 Dunstable Road in North Chelmsford, Massachusetts was the holder of a coastal commercial lobster permit #1541 during 2002. (Ex. #4)
2. William L. Picken of P.O. Box 671 in Humarock, Massachusetts was the holder of a coastal commercial lobster permit #7892. (Ex. #3).
3. William L. Picken is the son of Peter C. Picken. (Testimony of Mr. William L. Picken).
4. Peter C. Picken is a printer who owns his own printing business. (Testimony of Mr. William L. Picken).
5. William L. Picken is a fisherman. (Testimony of Mr. Peter C. Picken).

6. On or about October 8, 2002, Lieutenant Peter Hanlon of the Massachusetts Environmental Police (DLE) submitted an Enforcement Report to DMF Director Paul Diodati containing allegations of unlawful fishing activity of Peter C. Picken and William L. Picken. (Ex. #7).
7. Based on Lieutenant Hanlon's Enforcement Report coastal commercial lobster permit #1541 held by Peter C. Picken, and coastal commercial lobster permit #7892 held by William L. Picken were not renewed by DMF Director Diodati for the 2003 fishing year. (Order to Show Cause).
8. 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 §8.14(1)(c)).
9. DMF has prohibited the setting of any lobster traps within the Fixed Gear Free Zone during the months of September and October of each year. (Ex. #5).
10. The 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. #5).
11. A lobster pot and a lobster trap are the same device used to catch lobsters. (Adm. Notice).
12. By mailing dated August 28, 2002, Peter C. Pickens and William L. Pickens were notified by DMF that the setting of any lobster traps within the Fixed Gear Free Zone during September and October was unlawful and that violations would result in the suspension of coastal commercial lobster permits. (Ex. #6).
13. While on patrol on September 23, 2002 DLE Sergeant Wilton Gray III hauled 5 lobster traps that were within the Fixed Gear-Free Zone at position 42 06.2 - 70

- 23.6. All 5 lobster traps were attached by rope to a red and white buoy branded with the name "Picken" and the coastal commercial lobster permit #1541; had orange identification markings bearing the name "Picken" and the coastal commercial lobster permit #1541; and had white "trap tags" bearing the coastal commercial lobster permit #7892 MA/EEZ 02. (Ex. #7; testimony of Sergeant Gray).
14. While on patrol on September 30, 2002, Sergeant Gray hauled 5 lobster pots that were within the Fixed Gear-Free Zone at position 42 06.228 – 70 23.327. All 5 lobster traps were attached to a red and white buoy branded with the name "Picken" and the coastal commercial lobster permit #1541; had orange identification markings bearing the name "W. Picken" and the coastal commercial lobster permit #1541; and had white "trap tags" bearing the coastal commercial lobster permit #1541 MA/EEZ 02. (Ex. #7; testimony of Sergeant Gray).
15. While on patrol on September 15, 2002, DLE Lieutenant Peter J. Hanlon found lobster gear at eleven separate locations within the Fixed Gear-Free Zone. The lobster gear consisted of buoys, high-flyers and trawl line connected to lobster pots. The buoys were red and white, some of which were branded with coastal commercial lobster permit #1541, and others branded with coastal commercial lobster permit #7892. (Ex. #7; testimony of Lieutenant Hanlon).
16. Positions of all buoy, gear and lobster pot locations set forth in paragraphs 13, 14 and 15 are exact and were accurately taken by both Lieutenant Hanlon and Sergeant Gray using the Raytheon Model 35C Global Positioning System (GPS).
17. The GPS is used by Lieutenant Hanlon and Sergeant Gray to establish positions at sea by entering coordinates of well known landmarks into the Raytheon Model 35C and then using satellites to accurately establish particular positions and locations. (Testimony of Lieutenant Hanlon and Sergeant Gray).
18. Peter C. Picken set lobster pots within the Fixed Gear-Free Zone in the month of September 2002. (Ex. #7; Ex. #12; testimony of Lieutenant Hanlon and Sergeant Gray).



19. William L. Picken set lobster pots within the Fixed Gear-Free Zone in the month of September 2002. (Ex. #7; Ex. #12; testimony of Lieutenant Hanlon and Sergeant Gray).

### CONCLUSIONS OF LAW

1. It is unlawful to set, store or abandon lobster pots 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 commercial lobster permit. (322 CMR §7.01(13)(f)).
3. Holders of a coastal commercial 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. Peter C. Picken violated the provisions of 322 CMR §8.14(1)(c).
5. William L. Picken violated the provisions of 322 CMR §8.14(1)(c).
6. Coastal commercial lobster permits held by fishermen 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)).

I, David C. Hoover, Administrative Law Magistrate in the above-captioned Adjudicatory Proceeding hereby certify that the above Findings of Fact and Conclusions of Law were made by me on this 27<sup>th</sup> day of March 2003.



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March 28, 2003

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RE: Final Decision- Adjudicatory Proceedings LP-14-WG and LP-15-WG  
In Re: Peter C. Picken and Coastal Commercial Lobster Permit No. 1541  
In Re: William L. Picken and Coastal Commercial Lobster Permit No. 7892

Dear Mr. Aceto:

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 #1541 issued to Peter C. Picken will not be renewed; and that coastal commercial lobster permit #7892 issued to William L. Picken 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,

A handwritten signature in dark ink, appearing to read "Paul J. Diodati".

Paul J. Diodati  
Director

Enc.

Cc: Lt. Peter Hanlon