

STAFF SUMMARY FOR FEBRUARY 21, 2020

EXECUTIVE SESSION

Today's Item	Information <input type="checkbox"/>	Action <input checked="" type="checkbox"/>
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Executive session will include four standing topics:

- (A) Pending litigation to which FGC is a party
- (B) Possible litigation involving FGC
- (C) Staffing
- (D) Deliberation and action on license and permit items

Summary of Previous/Future Actions (N/A)**Background**

During the public portion of its meeting, FGC will call a recess and reconvene in a closed session pursuant to the authority of Government Code subsections 11126(a)(1), (c)(3), and (e)(1), and Section 309 of the California Fish and Game Code. FGC will address four items in closed session:

(A) Pending litigation to which FGC is a party

See agenda for a complete list of pending civil litigation to which FGC is a party, at the time the agenda was made public.

(B) Possible litigation involving FGC

None to report at the time the meeting binder was prepared.

(C) Staffing

For details about staffing, see the executive director's report under Agenda Item 12(A) for today's meeting.

(D) Deliberation and action on license and permit items

- I. *Langman accusation*: Consider the Proposed Decision in Agency Case No. 17ALJ01-FGC, the accusation filed against Keith Langman. On Jan 30, 2017, DFW filed an administrative accusation with FGC requesting the revocation of Mr. Langman's commercial fishing license, commercial trap permit, lobster operator permit, and southern rock crab trap permit. Mr. Langman filed a notice of defense asserting his right to a hearing. FGC referred the matter to the Office of Administrative Hearings (OAH) and, on Oct 28, 2019, OAH conducted a hearing. On Nov 25, 2019, OAH provided FGC a proposed decision, which found that DFW had demonstrated an adequate basis for action against Mr. Langman and that the requested revocations were appropriate (Exhibit D1).
- II. *Anderson salmon vessel permit appeal*: Consider the appeal filed by Michael Anderson in Agency Case No. 19ALJ14-FGC regarding his request to renew his salmon vessel permit. On May 30, 2019, DFW provided Mr. Anderson notice that DFW could not reinstate Mr. Anderson's salmon vessel permit (Exhibit D2). On

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Jun 6, 2019, Mr. Anderson filed an appeal with FGC (Exhibit D3). On Jan 13, 2020, DFW submitted a letter to FGC stating that DFW does not oppose granting the appeal (Exhibit D4).

- III. *Dirkse salmon vessel permit appeal*: Consider the appeal filed by Douglas Dirkse in Agency Case No. 19ALJ16-FGC regarding his request to renew his salmon vessel permit. On May 13, 2019, DFW provided Mr. Dirkse notice that DFW could not reinstate Mr. Dirkse's salmon vessel permit (Exhibit D5). On May 22, 2019, Mr. Dirkse filed an appeal with FGC (Exhibit D6). On Nov 27, 2019, DFW submitted a letter to FGC stating that DFW does not oppose granting the appeal (Exhibit D7).

Significant Public Comments (N/A)

Recommendation

FGC staff: Grant the appeals filed by Michael Anderson and Douglas Dirkse, acknowledging that in both appeals the appeal does not impact fees owed under the statutory structure. Adopt the proposed decision regarding the accusation against Keith Langman.

Exhibits

- D1. [Proposed Decision for Case No. 17ALJ01-FGC; OAH No. 2019030577](#), received Nov 25, 2019
- D2. [Letter from DFW to Michael Anderson](#), dated May 30, 2019
- D3. [Letter from Michael Anderson](#), received Jun 12, 2019
- D4. [Letter from DFW](#), dated Jan 13, 2020
- D5. [Letter from DFW to Douglas Dirkse](#), dated May 13, 2019
- D6. [Email from Douglas Dirkse](#), dated May 22, 2019
- D7. [Letter from DFW](#), dated Nov 27, 2019

Motion/Direction

(D) Moved by _____ and seconded by _____ that the Commission grants the appeal filed by Michael Anderson.

AND

Moved by _____ and seconded by _____ that the Commission grants the appeal filed by Douglas Dirkse.

AND

Moved by _____ and seconded by _____ that the Commission adopts the the proposed decision regarding the accusation against Keith Langman.



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

GENERAL JURISDICTION DIVISION

1350 Front Street Suite 3005, San Diego CA 92101
(619) 525-4475 phone
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CALIFORNIA
FISH AND GAME
COMMISSION

Department of General Services

Governor Gavin Newsom

2019 NOV 25 AM 9:30

November 22, 2019

California Fish and Game Commission
Attn: Executive Director
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

Subject: Langman, Keith
OAH No. 2019030577
Agency No. 17ALJ01-FGC

Enclosed are the following:

- The original Proposed Decision
- An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
- The original Decision
- Exhibits forthcoming under a separate label via GSO
- Email copy of the Proposed Decision to:
- The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits 1 – x to you.

AB: pg

Encl.

Transmittal Form
OAH 60 (Rev. 04/09)

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**BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

KEITH LANGMAN, Respondent

Case No. 17ALJ01-FGC

OAH No. 2019030577

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 28, 2019, in San Diego, California.

David Kiene, Senior Legal Counsel, represented complainant David Bess, Chief, Law Enforcement Division, Department of Fish and Wildlife (department), State of California.

Keith Langman, respondent, represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 28, 2019.

FACTUAL FINDINGS

Background

1. Respondent holds a Commercial Fishing License, Commercial Trap Permit, Lobster Operator Permit, and Southern Rock Crab Trap Permit (collectively referred to as "entitlements").¹

2. On January 30, 2017, complainant, in his official capacity, filed an accusation against respondent seeking to permanently revoke respondent's entitlements. The accusation alleged 12 causes for discipline based on violations of the Fish and Game Code.² Respondent timely filed a notice of defense. This hearing ensued.

¹ There was no evidence regarding when the department originally issued respondent these entitlements, but they were in full force and effect at all times relevant to this accusation.

² At hearing, complainant moved to amend the accusation by interlineation by withdrawing the twelfth cause for discipline in its entirety. The request was granted without objection.

The December 4, 2016, Incident

COMPLAINANT'S EVIDENCE

3. Robert Rojas is employed by the department as a Wildlife Officer (Warden) who testified at the hearing and prepared an Arrest/Investigation Report that was received as evidence. The following is a summary of his testimony and report.

On December 4, 2016, Warden Rojas, Warden Justin Sandvig, and another warden were conducting a marine patrol off the coast of Point Loma in San Diego. At approximately 10:40 a.m., Warden Rojas observed a commercial fishing vessel registered to respondent. Warden Rojas observed two subjects aboard the vessel, who were later identified as respondent and his deckhand, Gary Ellis Greiner. As the wardens approached the vessel in their skiff, Warden Rojas observed respondent and Mr. Greiner retrieve a pink lobster trap buoy from the surface of the water. Based on the angle of the line that connected the buoy to the trap, Warden Rojas believed that the trap was on the ocean floor. As the wardens continued to approach the vessel, Warden Rojas observed respondent and Mr. Greiner look in the wardens' direction and then at each other. Respondent then turned the vessel in an "evasive manner" to prevent the port side of the boat from being observed by the approaching wardens. Warden Rojas then observed Mr. Greiner reach into a large, blue, plastic barrel and pull out what appeared to be a black, mesh, box, receiver. A receiver is a container used to keep fish alive in the water. Mr. Greiner appeared to throw the receiver into the water, but Warden Rojas's view was obstructed because Mr. Greiner was on the port side. Warden Rojas shouted at Mr. Greiner to "stop" and identified himself as a department officer. Mr. Greiner then retrieved another receiver from the plastic barrel and threw it overboard. Warden Rojas had a clear view of the receiver as he was

approximately 10 to 15 feet away from respondent's vessel. Warden Rojas believed that Mr. Greiner threw the receiver overboard in a deliberate motion.

The wardens boarded respondent's vessel to perform an inspection. Warden Sandvig asked respondent what Mr. Greiner threw overboard, and respondent said it was "just bait." The wardens inspected the lobsters on the boat using a department-issued lobster gauge. This is a device that is commercially available and calibrated to three and one-quarter inches, which is the minimum size-limit to catch California spiny lobster. Two of the 25 lobsters found aboard the vessel measured less than the three and one-quarter inch size limit, and were thus undersized. All three wardens used their own gauges to verify that the two lobsters were undersized. Based on the way the gauge is shaped, if there is any gap between the caliper and the shell then the lobster is undersized. Warden Rojas photographed the two undersized lobsters and seized them as evidence.

Warden Rojas inspected respondent's paperwork and found that a page from the Daily Lobster Logbook dated October 6 through October 8, 2016, had not been delivered to the department by the 10th day of the following month as required by regulation. The log book consists of pages in duplicate. Both the department's copy and fisherman's copy were still in the log book. Warden Rojas issued respondent citations for taking undersized lobster, late-filed lobster fishing logs, failing to declare catch upon demand, and destruction of evidence.

After the contact with respondent ended, wardens donned SCUBA gear and dove around the immediate area to search for the receivers they believed Mr. Greiner threw overboard. They found an empty receiver that matched the description of the one Wardens Rojas and Sandvig observed Mr. Greiner throw overboard. The receiver was open in one end and was empty. In his almost 20 years of experience as a warden,

Warden Rojas has observed numerous ways by which fisherman retain undersized lobster and attempt to hide them from wardens. One common method is for fisherman to place undersized lobsters in containers, such as the receiver, which can easily be dumped overboard upon encountering wardens.

4. Warden Justin Sandvig testified at the hearing. He was with Warden Rojas during the encounter with respondent and wrote a supplemental investigation report. Warden Sandvig also observed Mr. Greiner reach into the blue barrel and retrieve the black, mesh receiver. He immediately yelled at Mr. Greiner to stop what he was doing but Mr. Greiner looked in the direction of the wardens before dropping the receiver in the ocean. Warden Sandvig could clearly see there were lobsters inside of the receiver. He had been a warden for over 13 years and specialized in offshore patrol. He also had experience with fisherman keeping undersized lobsters in dump buckets that could be discarded if caught by wardens. After Warden Sandvig boarded respondent's vessel, he asked respondent what was in the receiver. Respondent said it was only bait. He then asked why Mr. Greiner would throw bait overboard and respondent simply shrugged his shoulders. Warden Sandvig asked Mr. Greiner what he threw overboard and Mr. Greiner responded that he did not know what Warden Sandvig was talking about.

5. Respondent was charged with multiple violations of the Code in the Superior Court of California, County of San Diego, Case No. M227528CF. At the time of the incident, respondent was on criminal probation following a conviction for taking an undersized lobster in Case No. M224130CF, discussed below. On April 13, 2017, the court dismissed the charges in Case No. M227528CF but extended respondent's probation in Case No. M224130CF.

RESPONDENT'S EXPLANATION

6. Respondent submitted written responses to each of the causes for discipline contained in the accusation. Regarding the allegation that he failed to exhibit lobsters to the wardens upon their request, respondent wrote that he used 48-hour "pop-ups" and, "[i]t is not possible to exhibited [*sic*] lobsters that are in traps or receivers that are sitting on the bottom of the ocean until the pop up disintegrates and the buoy pops up to the surface (about 48 hours)."

7. Regarding the allegation that respondent possessed undersized lobsters, respondent said the court dismissed the charge. He wrote:

I don't believe I had undersize lobster[s]. The officer took two lobsters over to the fish and wildlife mother ship to measure with a micrometer. All lobsters where [*sic*] on my gauge. I asked if I could re measure the two lobsters that he later took over to the mother ship but the officer would not let me. We are not required to use micrometers.

8. Regarding the allegation that respondent possessed fishing logs that were not timely submitted to the department, respondent wrote that he accidentally missed mailing one of the pages for the month of October. He did not believe this was a serious violation because the department received similar information when he submitted the transport logs to the department and the buyer also turned in the information for the month of October on the "landing receipts."

EVALUATION OF THE EVIDENCE

9. The testimony of Wardens Rojas and Sandvig was credible. Their reports thoroughly documented the encounter with respondent. A preponderance of evidence established that respondent failed to exhibit lobsters for inspection upon request of the wardens because respondent's agent, Mr. Greiner, threw the lobsters into the ocean upon seeing the wardens approach their vessel. When the wardens approached respondent's vessel, the wardens observed respondent and Mr. Greiner look at each other before respondent maneuvered the boat so the port side where Mr. Greiner was located was obscured from the wardens' view. After Mr. Greiner threw the first receiver into the ocean, he ignored Warden Sandvig's order to stop and proceeded to throw another receiver containing lobsters into the ocean. When questioned by Warden Sandvig, respondent lied and said that Mr. Greiner was only throwing bait overboard. However, it is clear that under the circumstances, respondent and Mr. Greiner were attempting to prevent the wardens from finding undersized lobsters taken by respondent.

10. A preponderance of evidence established that respondent possessed two undersized lobsters. Warden Rojas credibly testified that when measuring each lobster, there was a gap between the calipers of his certified lobster gauge. Although respondent testified that he believed the lobsters were of legal size, his testimony was not credible or supported by any other evidence.

11. A preponderance of evidence established that respondent failed to timely submit the department his fishing logbook covering the month of October 2016.

November 24, 2015, Incident

COMPLAINANT'S EVIDENCE

12. Warden Santos Cabral (now a Lieutenant Specialist) testified at the hearing and prepared an Arrest/Investigation Report that was received as evidence. The following is a summary of his testimony and report. On November 24, 2015, Warden Cabral was on patrol aboard a United States Coast Guard (USCG) cutter offshore of Point Loma. Warden Cabral was aboard the cutter's small boat and observed respondent's vessel pulling lobster traps from the kelp bed. Warden Cabral and USCG personnel boarded the vessel and identified respondent and Mr. Greiner. Warden Cabral measured the lobsters using his department-issued lobster gauge, and found six lobsters that were undersized. Warden Cabral compared his lobster gauge with respondent's gauge and observed that respondent's gauge appeared to be accurate. Warden Cabral asked respondent if he measured each of the lobsters, and respondent replied that he thought the hairs at the back of the carapace counted toward the minimum size. Warden Cabral explained that the hairs did not count toward the measurement of the lobster.

13. On November 9, 2016, in the Superior Court of California, County of San Diego, in Case No. M224130CF, respondent pleaded guilty and was convicted of a violation of Fish and Game Code section 8252, taking of an undersized lobster. The original sentencing information was not provided, but on April 13, 2017, the court found respondent violated his probation and extended the probation until April 12, 2020. The court ordered respondent to pay fines and fees and perform 40 hours of volunteer work.

RESPONDENT'S EXPLANATION

14. Respondent wrote that he pled guilty to one count of taking an undersized lobster, and the other five counts were dismissed. Respondent did not believe he had six undersized lobsters. He wrote that he pled guilty because he wanted to save his and the court's time.

EVALUATION OF THE EVIDENCE

15. A preponderance of the evidence established respondent possessed six undersized lobsters. In addition to taking an undersized lobster for which respondent was criminally convicted, Warden Cabral's testimony that he measured five additional undersized lobsters was credible. Although respondent argued that the remaining criminal counts were dismissed, this is not dispositive of whether there was a violation, and the weight of the evidence established that these lobsters too were undersized.

November 8, 2014, Incident

COMPLAINANT'S EVIDENCE

16. On November 8, 2014, Wardens Rojas and Sandvig were conducting a marine patrol when they contacted respondent and Mr. Greiner in a vessel off the coast of Point Loma. The wardens boarded the vessel to conduct an inspection of respondent's catch and paperwork. Respondent did not have his original Commercial Fishing License, which he was required to present, but did provide a photocopy of the license. Warden Rojas verified that respondent did have a valid license. In addition, respondent did not have his Commercial Vessel Registration and Commercial Lobster Permit, both of which he was required to maintain aboard the vessel while fishing for lobster.

The wardens located 15 lobsters. They measured the lobsters using their calibrated lobster gauges and found 6 of the 15 lobsters were undersized. Warden Rojas compared his gauge to respondent's lobster gauge and noted that the inside measurement of respondent's gauge was less than three and one-quarter inches.

On March 9, 2015, in the Superior Court of California, County of San Diego, in Case No. M196005CF, respondent pleaded guilty and was convicted of a violation of Fish and Game Code section 8252, taking of an undersized lobster. The court dismissed the remaining five counts of this violation and ordered respondent to participate in the San Diego Downtown Community Court. No additional sentencing information was provided.

RESPONDENT'S EXPLANATION

17. Respondent wrote that he pled guilty to having one undersize lobster because the judge told him that if performed 16 hours of community service at a homeless shelter all of the charges would be dropped. Regarding the allegations that respondent failed to carry his commercial boat registration, commercial fishing license, and lobster permit, respondent wrote that he was 63 years old and when the wardens began questioning him he became flustered and could not find an envelope containing these documents. The wardens were able to verify that respondent did in fact have the required licenses and permits.

EVALUATION OF THE EVIDENCE

18. A preponderance of the evidence established respondent possessed six undersized lobsters. In addition to the undersized lobster for which respondent was criminally convicted for unlawfully taking, Warden Rojas's testimony that he measured five additional undersized lobsters was credible. It was undisputed that respondent

failed to carry and conspicuously post his commercial vessel registration, and did not have in his possession his commercial fishing license and lobster permit.

September 16, 2005, Incident

COMPLAINANT'S EVIDENCE

19. On September 16, 2005, Warden Rojas and other wardens were conducting a patrol offshore from San Clemente island. Through radar, they identified a vessel that appeared to be drifting, which indicated that it might be involved in some form of fishing. At approximately 7:25 a.m., they were able to get a close look at the vessel, a commercial fishing vessel registered to respondent. Respondent and his crewmember were bringing in a drift gill net onto a large reel at the stern of the boat. At 7:30 a.m., Warden Rojas made contact with the vessel. Warden Rojas spoke to a third individual, who was a contract fisheries observer for the National Oceanic and Atmospheric Administration (NOAA). At approximately 7:45 a.m., Lt. E. Kord used radar aboard the department's patrol boat to obtain a distance from the end of the net to the stern of respondent's vessel. The distance measured .688 nautical miles (4,200 feet). Based on the amount of net already on the reel, Warden Rojas suspected that the net exceeded the maximum permitted length of one nautical mile. Warden Rojas observed the radar reflector located at the end of the net, which was a coffee can taped to a bamboo stick. Regulations require the radar deflector to be 10 inches in any dimension, but the coffee can measured only 7.5 inches by 6 inches. In addition to not meeting the legal dimensions, respondent's permit number was not affixed to the buoy attached to the shaft. Having a proper radar reflector is a safety issue as it allows for other vessels to safely navigate around a drift gill net.

Warden Rojas boarded respondent's vessel at 8:15 a.m. and spoke to respondent. Warden Rojas asked respondent why the radar deflector was not of proper size. Respondent said his net was run over two nights ago and he lost his radar deflector as a result. When asked, respondent said the total length of net on the reel was 800 fathoms (4,800 feet). Warden Rojas informed respondent that he would need to measure the net and asked how much longer it would take respondent to bring in the rest of the net. Respondent said he had three or four more hours' worth of pulling. Warden Rojas gave respondent the option of measuring the net in the water or back on the dock in San Diego; respondent requested it be measured on the dock. At approximately 9:00 a.m., the wardens returned to their patrol boat. At 9:15 a.m., Lt. Kord measured the distance from the radar reflector at the end of the net to the stern of respondent's vessel, which measured .368 nautical miles.

Warden Rojas also ascertained that respondent was fishing in an area where, from June 1 through November 15, shark or swordfish gill nets are prohibited from being in the water from two hours after sunrise to two hours before sunset. According to the U.S. Naval Observatory's sun and moon data for that date, sunrise was at 6:38 a.m. Thus, respondent was not permitted to have his net in the waters past 8:38 a.m. At 10:24 a.m., Warden Rojas observed the last of the gill net being reeled up on respondent's vessel.

The wardens escorted respondent's vessel back to port and surveilled it until the next morning when Warden Rojas and 15 of his colleagues measured the net on the pier. They measured a total floatline measurement of 6,600 feet, which was 660 feet over the legal limit. This 10 percent difference would allow respondent to possibly yield 10 percent more fish. Wardens seized 660 feet of the net.

On May 11, 2006, in the Superior Court of California, County of San Diego, in Case No. M980079CF, respondent pled no contest to a misdemeanor violation of Fish and Game Code section 8573, subdivision (c), having an improper radar deflector. All remaining charges were dismissed. The court placed respondent on summary probation for three years, ordered him to pay fines and fees, and ordered him to forfeit the unlawful portion of his net. All proceeds from the catch were returned to respondent.

RESPONDENT'S EXPLANATION

20. Regarding the non-complaint radar deflector, respondent wrote that his original reflector had fallen off the previous day, so he attached a coffee can. He intended on purchasing a new reflector upon returning to port. Respondent wrote that he was not given the opportunity to get the gill net out of the water in time. He had to stop pulling net because the wardens were questioning him, his crew, and the federal observer. After the deadline for retrieving the net from the water past, he slowed the retrieving pace to allow his crew and the observer time "to do there [*sic*] and keep the deck in ship shape." Respondent believed the City Attorney declined to prosecute this violation. Respondent also stated that the judge dismissed the charge that his net was too long. He believed the wardens included the two stotzas float line when measuring the end. There is a stotza at each end and each measures 300 feet.

EVALUATION OF THE EVIDENCE

21. A preponderance of evidence established that respondent did not attach a legally sufficient radar detector to his gill net. Respondent's conviction is conclusive evidence of this violation. Respondent also failed to affix his registration number to the attached buoy or float.

22. A preponderance of evidence established that respondent kept a shark or swordfish gill net in the water after two hours following sunrise. It was undisputed that respondent was fishing in waters where restrictions on the time a gill net could be used were in effect. Warden Rojas credibly testified that respondent did not finish retrieving the gill net until 10:24 a.m., approximately two hours after the 8:38 a.m. deadline.

Respondent argued that the wardens' inspection impeded his ability to retrieve the gill net in time. Essentially, respondent argued that but for the wardens conducting the inspection, he would have retrieved the net before the 8:38 a.m. deadline. There is some merit to respondent's argument. However, as respondent's argument is essentially an affirmative defense, he has the burden of proving that his gill net would have been timely retrieved but for the wardens' intervention. Respondent did not meet this burden. The wardens contacted respondent's vessel at 7:30 a.m., approximately one hour before the deadline. At 7:45 a.m., the department's radar measured the net in the water to be .688 nautical miles or 4,200 feet, which was approximately 64 percent of the total net length of 6,600 feet. Warden Rojas asked respondent how much longer it would take to retrieve the net and respondent said it would be three or four hours. The wardens disembarked respondent's vessel at 9:00 a.m. Respondent did not retrieve the entire net until approximately an hour-and-a-half later. Although respondent stated that he retrieved the net at a slower pace because he was already past the deadline, this belies his contention that he would have timely recovered his net. Put another way, respondent had approximately 64 percent of his net in the water with one hour left at the time the wardens contacted the vessel. In order to show that he would have recovered the remaining net before 8:38 a.m., respondent would have had to demonstrate that the remaining net could be recovered in less than an hour. At 9:15 a.m., 15 minutes after the wardens disembarked, the department's radar

measured 0.368 nautical miles of net in the water. Yet, it took respondent over an hour to recover this amount. Under these circumstances, respondent could not show that he would have recovered approximately twice this length of net in under an hour had the wardens not interrupted the process.

23. A preponderance of evidence established that respondent's gill net measured 6,600 feet in length, exceeding the maximum legal limit. Although respondent believed that the wardens, in measuring his net, included the stotzas, which by statute are excluded from the measurement, Warden Rojas credibly testified that the measurement did not include the stotzas.

Respondent's Testimony

24. Respondent testified that he has been a commercial fisherman for 45 years. He is now basically retired. He sold his lobster permit in 2016. He wants to retain his commercial fishing license because he still likes to take friends out fishing and he cannot assist in any manner, including driving the boat, if he does not have a commercial license. He has been trying to sell his boat and the crab permit he still retains. Because of the lottery system for selling permits, he has been unable to sell the crab permit. If the permit is revoked, he will not be able to sell it, which is worth thousands of dollars.

LEGAL CONCLUSIONS

The Fish and Game Commission's Authority

1. Fish and Game Code section 7857, subdivision (b), provides that the Fish and Game Commission (commission) may suspend, revoke, or cancel commercial

fishing privileges for a period of time to be determined by the commission for reasons that include:

(2) A violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control.

2. California Code of Regulations, title 14, section 746 outlines the procedures utilized for hearings conducted to revoke an entitlement.

3. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (Evid. Code, § 500.) The burden of proof is on the department to prove each of the causes for discipline contained in the accusation. The standard of proof is a preponderance of the evidence. (*Id.* at § 115.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Relevant Statutes and Regulations

4. Fish and Game Code section 2012 requires among other things that all fish³ taken⁴ must be exhibited upon demand to any person authorized by the department to enforce the Fish and Game Code.⁵

5. Fish and Game Code section 8252 provides:

No spiny lobster less than three and one-quarter inches in length measured in a straight line from the rear edge of the eye socket to the rear edge of the body shell, both points to be on the midline of the back, may be taken, possessed, purchased, or sold.

Every person taking spiny lobster shall carry a measuring device and shall measure any lobster immediately on removal from his trap and if it is found to be undersize the lobster shall be returned to the water immediately.

6. Fish and Game Code section 7881, subdivision (b), requires a commercial boat registration to be carried aboard the vessel at all times and to be posted in a conspicuous place.

³ The term "fish" includes crustaceans. (Fish & G. Code, § 45.)

⁴ The term "take" means hunt, pursue, catch, capture, or kill. (*Id.* at § 86.)

⁵ The department is authorized to inspect all boats where fish may be stored. (*Id.* at § 1006.)

7. Fish and Game Code section 7857, subdivision (d), requires a commercial fishing license, permit, or other entitlement to be in the licensee's, permittee's, or entitled person's possession, or immediately available to the licensee, permittee, or entitled person at all times when engaged in any activity for which the commercial fishing license, permit, or entitlement is required.

8. Fish and Game Code section 8254, subdivision (b), provides: "Every person who takes, assists in taking, possesses, or transports lobsters for commercial purposes while on any boat, barge, or vessel, or who uses or operates or assists in using or operating any boat, net, trap, line, or other appliance to take lobsters for commercial purposes, shall have a valid lobster permit."

9. Fish and Game Code section 8573 (as in effect in 2005)⁶ permits drift gill nets to be used to take shark and swordfish under permit subject to the following restrictions:

(a) From June 1 to November 15, inclusive, shark or swordfish gill nets shall not be in the water from two hours after sunrise to two hours before sunset east of a line described as follows:

From a point beginning at Las Pitas Point to San Pedro Point on Santa Cruz Island, thence to Gull Island Light, thence to the northeast extremity of San Nicolas Island, thence along the high water mark on the west side of San Nicolas Island to the southeast extremity of San Nicolas

⁶ The statute was amended effective January 1, 2008.

Island, thence to the northwest extremity of San Clemente Island, thence along the high water mark on the west side of San Clemente Island to the southeast extremity of San Clemente Island, thence along a line running 150° [sic] true from the southeast extremity of San Clemente Island to the westerly extension of the boundary line between the Republic of Mexico and San Diego County.

(b)(1) The total maximum length of a shark or swordfish gill net on the net reel on a vessel, on the deck of the vessel, and in the water at any time shall not exceed 6,000 feet in float line length. The float line length shall be determined by measuring the float line, as tied, of all the net panels, excluding the bridle, towline, or stotza and excluding the parachute or other drogue device.

10. California Code of Regulations, title 14, section 190 requires commercial licensees to submit to the department logbooks of fishing activities. Subdivision (d), requires logbooks to be submitted to the department "on or before the 10th day of each month following the month to which the records pertain."

Cause Exists to Revoke Respondent's Entitlements

11. Cause exists to discipline respondent's entitlements pursuant to Fish and Game Code section 7857, subdivision (b), based on the following grounds:

FIRST CAUSE FOR DISCIPLINE

Respondent violated Section⁷ 2012 by failing to exhibit lobsters upon demand by department wardens. [Factual Finding 9]

SECOND CAUSE FOR DISCIPLINE

Respondent violated Section 8252 by possessing two undersized lobsters on December 4, 2016. [Factual Finding 10]

THIRD CAUSE FOR DISCIPLINE

Respondent violated Regulation⁸ 190, subdivision (d), by failing to deliver a fishing logbook to the department on or before the 10th day of the month following the month to which the records pertain. [Factual Finding 11]

FOURTH CAUSE FOR DISCIPLINE

Respondent violated Section 8252 by possessing six undersized lobsters on November 24, 2015. [Factual Finding 15]

FIFTH CAUSE FOR DISCIPLINE

Respondent violated Section 8252 by possessing six undersized lobsters on November 8, 2014. [Factual Finding 18]

⁷ All future statutory references are to the Fish and Game Code.

⁸ All future references to "Regulation" are to title 13 of the California Code of Regulations.

SIXTH CAUSE FOR DISCIPLINE

Respondent violated Section 7881, subdivision (b), for failing to carry aboard and conspicuously post his commercial boat registration. [Factual Finding 18]

SEVENTH CAUSE FOR DISCIPLINE

Respondent violated Section 7857, subdivision (d), for failing to have in his possession his commercial fishing license while engaged in commercial fishing. [Factual Finding 18]

EIGHTH CAUSE FOR DISCIPLINE

Complainant alleged respondent violated Section 8254, subdivision (b), for failing to possess a valid lobster operator permit while engaged in commercial lobster fishing. That provision requires a lobster permit to engage in commercial lobster fishing, but does not state that such permit must be in the permittees possession. In this case, respondent had a valid lobster permit, although he did not have it in his possession. Thus, he did not violate Section 8254, subdivision (b), as alleged. Section 7857, subdivision (d), does requires him to have this permit in his possession while lobster fishing, however, this provision was not cited in this cause for discipline. Accordingly, the eighth cause for discipline is dismissed.

NINTH CAUSE FOR DISCIPLINE

Respondent violated Section 8573, subdivision (c), by failing to attach a radar reflector to his shark or swordfish gillnet that contained the proper dimensions and failing to affix his registration number to the to the attached buoy. [Factual Finding 21]

TENTH CAUSE FOR DISCIPLINE

Respondent violated Section 8573, subdivision (a), by keeping a shark or swordfish gill net in the water after 8:36 a.m., which was two hours after sunrise.

[Factual Finding 22]

ELEVENTH CAUSE FOR DISCIPLINE

Respondent violated Section 8573, subdivision (b)(1), as in effect in 2005, when his shark or swordfish gill net exceeded 6,000 feet. [Factual Finding 23]

Appropriate Discipline

12. Respondent committed numerous violations over the course a of two-year period from 2014 through 2016. Although respondent also committed three violations in 2005, these occurred almost 15 years ago; because of the time that has passed, little weight is afforded to these violations in determining discipline. The 2014 through 2016 violations range in seriousness. Respondent's failure to have his licenses and permits in his possession are technical violations that do not impact the public welfare. Much more concerning is that respondent repeatedly took undersized lobsters on three separate occasions, conduct for which he suffered two criminal convictions. The fact that the criminal court dismissed multiple charges as part of a plea agreement has no bearing on whether respondent committed these violations. Rather, respondent demonstrated a repeated pattern of disregarding the law in relation to the taking of undersized lobsters. These repeated violations have a direct impact on the State's ability to preserve its natural resources, which in turn affects the public welfare. Finally, respondent's actions on December 6, 2016, where his crewmember threw lobsters overboard upon the wardens' approach, is serious, and an aggravating factor. It was clear that respondent gave tacit approval to his crewmember to effectively destroy

evidence of taking undersized lobsters. By turning the boat away to obscure the wardens' view, respondent directly aided in this obstruction.

Although respondent testified that he is essentially retired and no longer engages in commercial fishing, there is nothing to prevent him from engaging in commercial fishing activities should he so choose. His repeated disregard of the law and lack of any rehabilitation provide no assurance that he will not continue to violate the commission's rules and regulations, or engage in criminal conduct in the future. When all the facts and circumstances are considered, it is contrary to the public interest to allow respondent to retain his commercial fishing privileges.

ORDER

All entitlements, including the commercial fishing license, commercial trap permit, lobster operator permit, and southern rock crab trap permit issued to respondent Keith Langman are permanently revoked.

DATE: November 22, 2019

DocuSigned by:

19DED247706C4FB...

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd.
Sacramento, CA 95834
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Certified Mail

May 30, 2019

Mr. Michael P. Anderson
[REDACTED]
[REDACTED] CA 95521

Subject: **NOTICE OF DENIAL FOR REINSTATEMENT OF SALMON VESSEL PERMIT, PERMIT NUMBER SA0724**

Dear Mr. Anderson:

This letter is in response to your request to reinstate the Salmon Vessel Permit (SVP), Permit Number SA0724, for the *FV Frances* (FG27133).

Authority-Salmon Vessel Permit

Fish and Game Code (FGC) Section 8235(a) states that the owner of a permitted vessel, or that owner's agent, may apply for renewal of the permit annually on or before April 30, upon payment of the fees without penalty. Upon receipt of the application and fees, the Department of Fish and Wildlife ("Department") shall issue the permit for use of the permitted vessel in the subsequent permit year only to the owner of the permitted vessel.

Authority-Late Renewal Applications

FGC Section 7852.2(a) establishes a graduated late fee for any renewal application that is received after the deadline.

FGC Section 7852.2(b) states the Department shall not waive the applicable late fee. Additionally, FGC Section 7852.2(c) requires the Department to deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Reason for Appeal to the Department

In your email dated April 30, 2019, you are requesting reinstatement of the SVP for the *FV Frances*. You explained several seasons of closures and limited seasons has caused you severe financial duress. You stated that you were told by Department personnel last spring that you had until June 30, 2019, to renew your 2018-2019 SVP with a late fee. You stated that you went to the Department's Eureka office on April 29, 2019, to pay your 2018 and 2019 permit fees and were told that you could not renew your permit. You further explained that it has been incredibly challenging to survive as a commercial salmon harvester and it would be sad to have an error end your livelihood and the life of a vessel that has been harvesting salmon since 1931.

Mr. Michael P. Anderson

May 7, 2019

Page 2

Department Findings

Department license records show that the *F/V Frances* last held a valid SVP in 2017-2018, which made you eligible to renew the permit for the 2018-2019 permit year.

Department Determination

Based on the previously stated information, your request to reinstate the SVP for the *F/V Frances* is denied, because the *F/V Frances* last held a valid SVP in the 2017-2018 permit year. The Department received your request to renew the SVP on April 30, 2019. FGC Section 7852.2(c) requires the Department to deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must submit a written appeal to the Fish and Game Commission (Commission) either by mail at P.O. Box 944209, Sacramento, CA 94244-2090, or by email at fgc@fgc.ca.gov. Pursuant to FGC Section 7852.2(d), your written appeal must be received within 60 days of the date of this letter. The Commission, upon consideration of the appeal, may grant the renewal of the SVP. If the Commission grants the renewal, it shall assess the applicable late fees, which amount to \$1,764.98. A fee schedule is enclosed.

If you have any questions or require further assistance, please contact Ms. Ruth Flores at (916) 928-7470 or Ruth.Flores@wildlife.ca.gov.

Sincerely,



Joshua Morgan, Chief
License and Revenue Branch
Enclosure

cc: Ms. Melissa Miller-Henson
Fish and Game Commission
Sacramento, CA

Ms. Ruth Flores
California Department of Fish and Wildlife
Sacramento, CA



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 1740 N. Market Blvd.
 Sacramento, CA 95834
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



Mr. Michael P. Anderson
 Fees Required for Reinstatement for a
 Salmon Vessel Permit (SVP)
 Permit Number SA0724
 FV Frances (FG27133)

Prior Year Fees	Permit Fees
2018-2019 Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 367.25
SVP	\$ 44.29
Late Fee (61 days to March 31, 2019)	\$ <u>607.75</u>

Prior Year Fees Due \$ 1,106.84

Prior year permit fees must be paid before a 2019-2020 SVP can be issued

Current Year Fees	
2019-2020 Commercial Fishing License	\$ 145.75
Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 379.00
SVP	\$ <u>45.84</u>

Total Current Fees Due \$ 658.14
Total Fees Due \$ 1,764.98

If the Fish and Game Commission should recommend approval, full payment of \$1,764.98 would be due.

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

June 6, 2019

2019 JUN 12 PM 1:01

I am writing to appeal the denial of the reinstatement of the Salmon Vessel Permit attached to the F/V Frances (FG 27133)

The combination of several seasons that were either severely limited or completely closed led me to make the decision to hold onto money meant to pay for my SVP and taking the fines in hopes of immediate financial survival. The decision was made when told by staff at your Eureka office I had until June 30, 2019 to pay for my license and fines.

On April 29, 2019 I returned to the Eureka office to pay both the licensing fees and fines incurred to be told by the very person that informed me I had until June of 2019 that I could not renew my SVP.

Due to this misinformation I sit tied up in Eureka while the most promising season offered to us in years passes before me. Please rectify this immediately as I've been further burdened by a mistake made by the staff of your Eureka office.

Thank You,

A handwritten signature in black ink, appearing to read "Michael Anderson", with a long horizontal line extending to the right.

Captain Michael Anderson

F/V Frances (FG27133)



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Office of the General Counsel
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 13, 2020

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Re: *In the Matter of Michael Anderson*

Dear Commissioners:

This letter is in response to Michael Anderson's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his Salmon Vessel Permit, #SA0724 ("SVP"). The SVP was last valid during the 2017-18 fishing year. Mr. Anderson submitted his appeal request to the Commission on June 12, 2019. The Department notes that while Mr. Anderson claims in his appeal request that he was misinformed by a staff member about the renewal deadline, he received two notifications from the Department on November 28 and November 30, 2018, reminding him of the March 30, 2019 renewal deadline. One of the reminders is attached. Nonetheless, the Department will not be participating in this appeal and accordingly, does not object to the renewal of the SVP for the 2019-2020 fishing year, provided that he pays all applicable fees.

The fees that Mr. Anderson must pay to renew the SVP are described in Fish and Game Code, section 7852.2 ("Section 7852.2"), subdivision (a). Section 7852.2, subdivision (a) states:

- (a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:
- (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).
 - (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).
 - (3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).

To emphasize that these fees must be paid, Section 7852.2, subdivision (b) states that "The department shall not waive the applicable late fee," while subdivision (d) states "If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." The fees total **\$1,764.98** and are described in the attached fee statement.

If you have any questions please contact me at the address above or by telephone number (916) 651-7646, or e-mail at David.Kiene@wildlife.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DK', is positioned above the typed name.

DAVID KIENE
Senior Staff Counsel

Cc: Michael Anderson



State of California - Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 1740 North Market Boulevard
 Sacramento, CA 95834
 www.wildlife.ca.gov

EDMUND G. BROWN JR, Governor
 CHARLTON H. BONHAM, Director



November 30, 2018

MICHAEL PHILLIP ANDERSON
 [Redacted]
 [Redacted] CA 95521



BOAT NAME: F/V FRANCES F&G BOAT#: FG27133

Subject: Commercial Fishing Limited Entry Permit Late Renewal Notice

Dear Permittee:

This letter is to inform you that you have not renewed your Commercial Fishing Limited Entry and Restricted Access Permit(s) with the California Department of Fish and Wildlife (CDFW) for the 2018-2019 permit year.

The deadline to renew is **March 31, 2019**.

Renewals submitted after the deadline will be denied. If you did not renew by the deadline, you may submit a written request for reinstatement of your permit to the Department's License and Revenue Branch at the address above.

To retain your permit, please submit the total fee for the license(s) and permit(s) below, along with the following:

- This Commercial Fishing Limited Entry Permit Late Renewal Notice.
- A copy of your current vessel documentation (**United States Coast Guard Certificate of Documentation or State Registration**).
- Payment - Credit Card Payment Authorization Form, personal check or money order.

<u>Licenses and Permit</u>	<u>FEE</u>
Commercial Boat Registration (FG27133)	\$367.25
Commercial Salmon Vessel Permit With Qualifier (SA0724)*	\$44.29
Limited Entry Late Fee (June 30, 2018 to March 31, 2019)	\$607.75
Total	\$1,019.29

* Qualifier must have the 2018 Commercial Fishing License and Salmon Stamp in order to renew the Salmon Vessel Permit.

Use the enclosed self-addressed envelope to mail the above items. If you have already renewed for the 2018-2019 permit year, please disregard this notice.

PLEASE NOTE: Incomplete renewals will not be accepted and will be returned to you.

If you have any questions or require further assistance, please contact the Department's License and Revenue Branch at (916) 928-5822 or LRBCOMM@wildlife.ca.gov.

Thank you for your attention to this matter

Enclosure

Conserving California's Wildlife Since 1870



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 1740 N. Market Blvd.
 Sacramento, CA 95834
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



Mr. Michael P. Anderson
 Fees Required for Reinstatement for a
 Salmon Vessel Permit (SVP)
 Permit Number SA0724
 FV Frances (FG27133)

Prior Year Fees	Permit Fees
2018-2019 Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 367.25
SVP	\$ 44.29
Late Fee (61 days to March 31, 2019)	\$ <u>607.75</u>
Prior Year Fees Due	\$ 1,106.84

Prior year permit fees must be paid before a 2019-2020 SVP can be issued

Current Year Fees	
2019-2020 Commercial Fishing License	\$ 145.75
Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 379.00
SVP	\$ <u>45.84</u>
Total Current Fees Due	\$ 658.14
Total Fees Due	\$ 1,764.98

If the Fish and Game Commission should recommend approval, full payment of \$1,764.98 would be due.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd.
Sacramento, CA 95834
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Certified Mail

May 13, 2019

Mr. Douglas B. Dirkse

[REDACTED]
[REDACTED] CA 92111

Subject: NOTICE OF DENIAL FOR REINSTATEMENT OF SALMON VESSEL PERMIT, PERMIT NUMBER SA0661

Dear Mr. Dirkse:

This letter is in response to your request to reinstate the Salmon Vessel Permit (SVP), Permit Number SA0661, for the *FV Olinka* (FG25318).

Authority-Salmon Vessel Permit

Fish and Game Code (FGC) Section 8235(a) states that the owner of a permitted vessel, or that owner's agent, may apply for renewal of the permit annually on or before April 30, upon payment of the fees without penalty. Upon receipt of the application and fees, the Department of Fish and Wildlife ("Department") shall issue the permit for use of the permitted vessel in the subsequent permit year only to the owner of the permitted vessel.

Authority-Late Renewal Applications

FGC Section 7852.2(a) establishes a graduated late fee for any renewal application that is received after the deadline.

FGC Section 7852.2(b) states the Department shall not waive the applicable late fee. Additionally, FGC Section 7852.2(c) requires the Department to deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Reason for Appeal to the Department

In your letter received on April 9, 2019, you are requesting reinstatement of the SVP for the *FV Olinka*. You explained that your SVP was not renewed in 2014 after renewing it since 1987. You did not realize you were renewing the Commercial Fishing Salmon Stamp instead of the SVP. You stated that you have not trolled for salmon for about 15 years, but never intended to retire the permit. This year you became interested in salmon fishing and attempted to renew your annual commercial licenses and you were told that your SVP had lapsed since 2014. You requested that the SVP be reinstated.

Mr. Douglas B. Dirkse

May 7, 2019

Page 2

Department Findings

Department license records show that the *FV Olinka* last held a valid SVP in 2013-2014, which made you eligible to renew the permit for the 2014-2015 permit year.

Department Determination

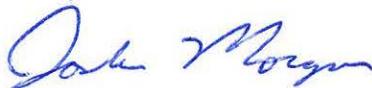
Based on the previously stated information, your request to reinstate the SVP for the *FV Olinka* is denied, because the *FV Olinka* last held a valid SVP in the 2013-2014 permit year. The Department received your request to renew the SVP on April 8, 2019. FGC Section 7852.2(c) requires the Department to deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must submit a written appeal to the Fish and Game Commission (Commission) either by mail at P.O. Box 944209, Sacramento, CA 94244-2090, or by email at fgc@fgc.ca.gov. Pursuant to FGC Section 7852.2(d), your written appeal must be received within 60 days of the date of this letter. The Commission, upon consideration of the appeal, may grant the renewal of the SVP. If the Commission grants the renewal, it shall assess the applicable late fees, which amount to \$3,219.12. A fee schedule is enclosed.

If you have any questions or require further assistance, please contact Ms. Ruth Flores at (916) 928-7470 or Ruth.Flores@wildlife.ca.gov.

Sincerely,



Joshua Morgan, Chief
License and Revenue Branch
Enclosure

cc: Ms. Melissa Miller-Henson
Fish and Game Commission
Sacramento, CA

Ms. Ruth Flores
California Department of Fish and Wildlife
Sacramento, CA



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 1740 N. Market Blvd.
 Sacramento, CA 95834
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Mr. Douglas B. Dirkse
 Fees Required for Reinstatement for a
 Salmon Vessel Permit (SVP)
 Permit Number SA0661
 FV *Olinka* (FG25318)

Prior Year Fees	Permit Fees
2014-2015 SVP	\$ 42.49
Late Fee (61 days to March 31, 2015)	\$ 581.25
2015-2016 SVP	\$ 43.00
Late Fee (61 days to March 31, 2016)	\$ 589.00
2016-2019 SVP	\$ 43.00
Late Fee (61 days to March 31, 2017)	\$ 589.00
2017-2018 SVP	\$ 43.00
Late Fee (61 days to March 31, 2018)	\$ 590.50
2018-2019 SVP	\$ 44.29
Late Fee (61 days to March 31, 2019)	\$ <u>607.75</u>
Prior Year Fees Due	\$ 3,173.28

Prior year permit fees must be paid before a 2019-2020 SVP can be issued

Current Year Fees	
2019-2020 SVP	\$ <u>45.84</u>
Total Current Fees Due	\$ 45.84
Total Fees Due	\$ 3,219.12

If the Fish and Game Commission should recommend approval, full payment of \$3,219.12 would be due.

From: Douglas Dirkse [REDACTED]@gmail.com>

Date: May 22, 2019 at 10:46:03 AM PDT

To: "fgc@fgc.ca.gov" <fgc@fgc.ca.gov>

Subject: Expired Salmon Vessel Permit

This is an appeal to the Fish and Game Commission for the reinstatement of an expired Salmon Vessel Permit (SVP), Permit Number SA0661, for the F/V Olinka (FG25318)

I understand the reason for the denial, FGC Section 7852.2(c)

It was never my intention to let go of the SVP, I was renewing my Salmon Stamp every year and didn't realize I wasn't getting the SVP, I was focused on diving urchins and sea cucumbers...

Please consider my appeal for all the same considerations as in the original request.

My livelihood depends on the SVP now that I am unable to dive anymore.

I understand the applicable late fees, I don't have a problem paying them if I get the SVP back.

Thanks for the detailed response back on this matter, and how to resolve it.

Douglas Dirkse,

F/V Olinka

() - [REDACTED]

[REDACTED]
[REDACTED], Ca. 92111

Paper backup to follow by Certified Mail

Sent from my iPad



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Office of the General Counsel
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 27, 2019

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Re: *In the Matter of Douglas Dirkse*

Dear Commissioners:

This letter is in response to Douglas Dirkse's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his Salmon Vessel Permit, #SA0661 ("SVP"). The SVP was last valid during the 2013-14 fishing year. Mr. Dirkse submitted his appeal request to the Commission on May 22, 2019. The Department will not be participating in this appeal and accordingly, does not object to the renewal of the SVP for the 2019-2020 fishing year, provided that he pays all applicable fees.

The fees that Mr. Dirkse must pay to renew the SVP are described in Fish and Game Code, section 7852.2 ("Section 7852.2"), subdivision (a). Section 7852.2, subdivision (a) states:

- (a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:
- (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).
 - (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).
 - (3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).

To emphasize that these fees must be paid, Section 7852.2, subdivision (b) states that "The department shall not waive the applicable late fee," while subdivision (d) states "If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." The fees total **\$3,219.12** and are described in the attached fee statement.

If you have any questions please contact me at the address above or by telephone number (916) 651-7646, or e-mail at David.Kiene@wildlife.ca.gov.

Sincerely,

DAVID KIENE
Senior Staff Counsel

Cc: Douglas Dirkse



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 1740 N. Market Blvd.
 Sacramento, CA 95834
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



Mr. Douglas B. Dirkse
 Fees Required for Reinstatement for a
 Salmon Vessel Permit (SVP)
 Permit Number SA0661
 FV Olinka (FG25318)

Prior Year Fees	Permit Fees
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Prior Year Fees Due	\$ 3,173.28

Prior year permit fees must be paid before a 2019-2020 SVP can be issued

Current Year Fees	
2019-2020 SVP	\$ <u>45.84</u>
Total Current Fees Due	\$ 45.84
Total Fees Due	\$ 3,219.12

If the Fish and Game Commission should recommend approval, full payment of \$3,219.12 would be due.