

STAFF SUMMARY FOR OCTOBER 14, 2020

Executive Session**Today's Item****Information** ☐**Action** ☒

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.

In the writ proceeding brought by Aaron Lance Newman, the trial court entered a ruling (Exhibit A1). In the proceeding, Mr. Newman challenged FGC's decision to revoke his hunting and sport fishing privileges. The court has vacated FGC's decision without prejudice due to a perceived procedural problem.

(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 3 for today's meeting.

(D) *Deliberation and action on license and permit items*

- I. *Silva appeal*: Consider the appeal filed by Robert Silva in Agency Case No. 20ALJ06-FGC regarding his request to renew his lobster operator permit. On Apr 29, 2020, DFW provided Mr. Silva notice denying his request to reinstate a lobster operator permit (Exhibit D1). On Jun 4, 2020, Mr. Silva filed an appeal with FGC (Exhibit D2). On Oct 2, 2020, DFW submitted a letter to FGC stating that DFW does not oppose granting the appeal (exhibits D3 and D4). Given that DFW submitted a statement indicating it does not oppose the relief requested in the

STAFF SUMMARY FOR OCTOBER 14, 2020

appeal, the appeal is now uncontested. FGC has delegated to its executive director authority to enter a final order in an uncontested matter.

- II. *Perrone appeal*: Consider the appeal filed by Nicholas Perrone in Agency Case No. 20ALJ08-FGC regarding his request to renew his salmon vessel permit. On Aug 10, 2020, DFW provided Mr. Perrone notice denying his request to renew his salmon vessel permit (Exhibit D5). On Aug 25, 2020, FGC received an appeal from Mr. Perrone (Exhibit D6). On Oct 2, 2020, DFW submitted a letter to FGC stating that DFW does not oppose granting the appeal (exhibits D7 and D8). Given that DFW submitted a statement indicating it does not oppose the relief requested in the appeal, the appeal is now uncontested. FGC has delegated to its executive director authority to enter a final order in an uncontested matter.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Consider whether to appeal the trial court's decision in Aaron Lance Newman v. California Fish and Game Commission. Take no action on the administrative appeals under agenda items D.I and D.II and rely on FGC's executive director authority to take action on the appeals filed by Mr. Silva and Mr. Perrone.

Exhibits

- A1. [Sacramento County Superior Court Ruling, Case No. 34-2018-80002944](#)
- D1. [Letter from DFW to Robert Silva, dated Apr 29, 2020](#)
- D2. [Email from Robert Silva to FGC, dated Jun 4, 2020](#)
- D3. [Letter from DFW to FGC, dated Oct 2, 2020](#)
- D4. [Fee Statement from DFW, dated Apr 29, 2020](#)
- D5. [Letter from DFW to Nicholas Perrone, dated Aug 10, 2020](#)
- D6. [Letter from Nicholas Perrone to FGC, received Aug 25, 2020](#)
- D7. [Letter from DFW to FGC, dated Oct 2, 2020](#)
- D8. [Fee Statement from DFW](#)

Motion/Direction (N/A)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME	September 18, 2020	DEPT. NO	21
JUDGE	HON. SHELLEYANNE W. L. CHANG	CLERK	E. HIGGINBOTHAM
AARON LANCE NEWMAN, Petitioner, v. CALIFORNIA FISH AND GAME COMMISSION, and DOES 1 through 50, Respondents.		Case No.: 34-2018-80002944	
Nature of Proceedings:		RULING ON SUBMITTED MATTER RE: MOTION FOR SUMMARY JUDGMENT	

This matter came on for hearing on September 15, 2020. Having considered the filings and arguments of the parties, the Court now rules as set forth herein. For ease of review, the Court has restated its tentative ruling, but rules as stated in its "final ruling" section.

A. TENTATIVE RULING

I. DISCUSSION

A. Evidentiary Objections

Respondent has filed evidentiary objections to the declarations submitted in support of the motion for summary judgment. Respondent has failed to comply with California Rule of Court Rule 3.1354's requirement that each objection be numbered consecutively. The Court will refer to the objections as though they had been properly numbered. Objections 1, 8, 9, 10, and 11 are **SUSTAINED**. Objections 2-7 are moot, and objections 12 and 13 are **OVERRULED**.

B. Procedural Objection

Respondent argues this motion is procedurally deficient because Respondent has not yet made a general appearance in this matter, and is not required to file a responsive pleading until after the administrative record is lodged. Code of Civil Procedure section 437c(a)(1) provides,

A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed

since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.

Petitioner argues this argument is without merit because Petitioner's motion is based on the fact that Respondent "has not and cannot provide a court reporter transcript of electronic record of the Administrative hearing and such a record is a vital aspect of the necessary Administrative Record and a matter of due process right." (Reply, p. 1.) Petitioner argues Respondent has acknowledged that this argument *is* procedurally ripe for a motion for summary judgment and cites to Respondent's opposition which states, "...except for the challenge based on the unavailability of the reporter's transcript, which arose after the hearing, summary judgment is not available..." (Oppo., p. 10.)

While the Court agrees with Respondent that Petitioner's remaining arguments concerning the validity of the underlying administrative decision are not properly raised prior to Respondent's general appearance, the Court finds Petitioner is entitled at this time to raise argument concerning the unavailability of a complete administrative record.

C. The missing transcript

The parties agree that the following facts are undisputed. On July 3, 2018, Respondent revoked Petitioner's hunting and fishing privileges, which decision was rendered after a hearing conducted by an administrative law judge. The reporter's transcript for the administrative hearing is now "unavailable" as the court reporter has failed to produce the transcript for the hearing.

The question before the Court for purposes of the instant motion is whether Petitioner's due process rights have been violated because there is no reporter's transcript contained within the administrative record. Title 14 of the California Code of Regulations contains the provisions applicable to Respondent. Section 746 concerns the procedures for license or permit revocations, and provides,

"...the commission...shall comply with the following minimum safeguards to afford each applicant, licensee or permittee procedural and substantive due process when the commission considers revocation, suspension, transfer, reinstatement or waiver of renewal requirements for a license or permit including hunting and sport fishing license or permit privileges.

- (a) In the case where the applicant, licensee or permittee has already been convicted of a violation of the Fish and Game Code or any regulation pertaining to the activity licensed or permitted by said code, the commission shall comply with the following:

...

- (4) The proceedings of the hearing *shall be recorded by a court reporter or an electronic tape recording system.*

(12) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. *The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel* or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code. (Emphasis added.)

Petitioner argues the failure of Respondent to provide a copy of the court reporter's transcript, even if such a failure is due to circumstances beyond Respondent's control, is a clear violation of section 746(a)(4) and is a violation of Petitioner's right to due process. Respondent argues the absence of the transcript is due to a "rogue reporter" and that the transcript is not necessary because Respondent was not "statutorily required to rely on the transcript because it adopted the proposed decision in its entirety." (Oppo., p. 22.)

These arguments turn on statutory interpretation and construction. The interpretation of statutes is an issue of law on which the court exercises its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) In exercising its independent judgment, the Court is guided by certain established principles of statutory construction, which may be summarized as follows. The primary task of the court in interpreting a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v. Abbata* (1995) 9 Cal.4th 863, 871.) This extends to a challenge that a regulation exceeds the agency's authority, although the Court gives great weight to the agency's interpretation. (*Nick v. City of Lake Forest* (2014) 232 Cal.App.4th 871.)

The starting point for the task of interpretation is the words of the statute itself, because they generally provide the most reliable indicator of legislative intent. (See, *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

Beyond that, the Court must consider particular statutory language in the context of the entire statutory scheme in which it appears, construing words in context, keeping in mind the nature and obvious purpose of the statute where the language appears, and harmonizing the various parts of the statutory enactment by considering particular clauses or sections in the context of the whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.)

Section 746(a)(4) does not have any language to suggest that a transcript or recording is only required if the Commission fails to adopt the ALJ's proposed decision in its entirety, as Respondent suggests. The plain language provides that the hearing "*shall be recorded*" and in this case Respondent acknowledges that no such recording has ever been produced and will not

ever be produced. Further, subdivision (a)(12) provides that the record of proceedings “as designated by the petitioner *shall be prepared by the commission*” and here, Petitioner is being deprived of the ability to include the reporter’s transcript as part of the record of proceedings because such a transcript does not exist. While the Court acknowledges that the failure to produce a transcript does not appear to be Respondent’s “fault,” such a fact does not change the fact that compliance with subdivision (a)(4) and (a)(12) did not and cannot occur. Accordingly, pursuant to section 746, Respondent failed to provide the “minimum safeguards” to afford Petitioner substantive due process.

II. CONCLUSION

Petitioner’s requested remedy is that the Order of Decision be “vacated with prejudice.” However, such a remedy is inappropriate. Respondent argues the appropriate remedy would be to “reconstruct the missing record or remand for a new hearing if that is not possible.” (Oppo., p. 23)(citing *Chavez. v. Civil Service Com.* (1978) 86 Cal.App.3d 324, 332.) The Court finds that Petitioner’s requested remedy is inappropriate for the circumstances. The motion for summary judgment is **GRANTED** and the Order of Decision is **VACATED WITHOUT PREJUDICE**. Going forward, the parties are free to avail themselves of the remedies articulated in *Chavez*. A judgment shall be issued in favor of Petitioner, and against Respondent, and a peremptory writ shall issue commanding Respondent to take action specially enjoined by law in accordance with the Court’s ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondents. Respondent shall make and file a return within 60 days after issuance of the writ, setting forth what has been done to comply therewith.

B. FINAL RULING

At the hearing on this matter, Respondent reiterated that it has not yet made a general appearance in this matter, and as such, the motion for summary judgment is procedurally defective. The Court notes that Respondent did not file its opposition to the motion as part of a “special appearance” and did not note that counsel was making a “special appearance” as part of oral argument on this motion. While Respondent filed a procedural objection to the motion, Respondent also opposed the motion on the merits. In addition, on February 18, 2020, counsel for Respondent signed a stipulation to continue the hearing on the motion for summary judgment, which continuance the Court subsequently ordered. Lastly, Respondent opposed the ex parte application for a stay order on the merits of the application.

Pursuant to Code of Civil Procedure section 1014,

A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant.

“[I]t is the general rule that if an appearance is for any purpose other than to question the jurisdiction of the court, it is general.” (*Pfeiffer v. Ash* (1949) 92 Cal.App.2d 102, 104.) If a party

appears and “objected only to the consideration of the case, or to any procedure on it, because the court has not acquired jurisdiction of the person of the defendant, the appearance is special... On the other hand, if he appears and asks for any relief which could only be given to a party in a pending case, or which itself would be a regular proceeding in the case, it is a general appearance...” (*Milstein v. Ogden* (1948) 84 Cal.App.2d 229, 232.) “The list of acts constituting an appearance set forth in Code of Civil Procedure section 1014... is not exclusive. Instead, the determining factor is whether defendant takes a part in the particular action which in some manner recognizes the authority of the court to proceed.” (*Sierra Club v. Napa County Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 171)(citations omitted.) In *Sierra Club*, the First District Court of Appeal determined the county had made a general appearance by “stipulating in writing to an order granting Sierra Club a 60-day extension to prepare the administrative record. That action acknowledged the authority of the court to grant the extension...” (*Id.* at 172.) The court found such action “waived any irregularities.” (*Id.*)

Respondent has clearly made a general appearance in this matter. Such general appearance occurred first on February 7, 2020, when Respondent filed an opposition to the motion for summary judgment that included arguments going to the merits of the motion, not just an objection to the Court’s jurisdiction. Respondent again made a general appearance on February 18, 2020, when the stipulation to continue the hearing on the motion was filed, having been signed by Respondent. Although these actions occurred subsequent to Petitioner’s filing of the motion for summary judgment, such a motion is deemed to have been “made” at the hearing for purposes of the 60-days identified in Code of Civil Procedure section 437c. (*Sadlier v. Superior Court* (1986) 184 Cal.App.3d 1050.) Here, the hearing on this motion took place on September 15, 2020, a more than 60-days after Respondent made its general appearance in February 2020. Accordingly, the Court finds the motion for summary judgment is timely pursuant to Code of Civil Procedure section 437c.

The Court further notes that while Respondent repeatedly argued that *Chavez* mandates the Court order the parties to attempt to reconstruct the record, such an order is contraindicated in this matter by California Code of Regulations title 14, Section 746,

...the commission...shall comply with the following minimum safeguards to afford each applicant, licensee or permittee procedural and substantive due process when the commission considers revocation, suspension, transfer, reinstatement or waiver of renewal requirements for a license or permit including hunting and sport fishing license or permit privileges.

- (b) In the case where the applicant, licensee or permittee has already been convicted of a violation of the Fish and Game Code or any regulation pertaining to the activity licensed or permitted by said code, the commission shall comply with the following:

...

- (4) The proceedings of the hearing *shall be recorded by a court reporter or an electronic tape recording system.*

(12) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. *The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel* or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code. (Emphasis added.)

Respondent failed to provide the "minimum safeguards" to afford Petitioner substantive due process by failing to comply with this regulation. As such, any attempt to "reconstruct the administrative record" that falls short of providing Petitioner with a "record of the proceedings as designated by Petitioner" is insufficient. While the Court recognizes this finding differs from *Chavez*, the facts in *Chavez* did not involve a regulation explicitly requiring the recording of the proceedings and an affirmative duty on the part of Respondent, and therefore the remedy of reconstructing the record was, and remains, a factual possibility and not a legally deficient option.

Because the Order of Decision was based upon an incomplete administrative record and thus incapable of a meaningful review by the Court, the Order of Decision must be set aside. (*Aluisi v. County of Fresno* (1958) 159 Cal.App. 2d 823).

The motion for summary judgment is **GRANTED** and the Order of Decision is **VACATED WITHOUT PREJUDICE**. A judgment shall be issued in favor of Petitioner, and against Respondent, and a peremptory writ shall issue commanding Respondent to take action specially enjoined by law in accordance with the Court's ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondents. Respondent shall make and file a return within 60 days after issuance of the writ, setting forth what has been done to comply therewith.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D Schaber Courthouse
720 Ninth STREET
Sacramento, CA 95814-1311

SHORT TITLE: Newman vs. California Fish and Game Commission

CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)

CASE NUMBER:
34-2018-80002944-CU-WM-GDS

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 09/21/2020.

Clerk of the Court, by: /s/ E. Higginbotham  , Deputy

NHU Q NGUYEN
DEPUTY ATTORNEY GENERAL
PO BOX 944255
SACRAMENTO, CA 94244-2550

PAUL A BRISSE
THE MITCHELL LAW FIRM LLP
P.O.BOX 1008
EUREKA, CA 95502

CLERK'S CERTIFICATE OF SERVICE BY MAIL



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd.
Sacramento, CA 95834-1997
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



CERTIFIED MAIL

April 29, 2020

Mr. Robert J. Silva
[REDACTED]

**SUBJECT: NOTICE OF DENIAL FOR REINSTATEMENT OF NONTRANSFERABLE
LOBSTER OPERATOR, PERMIT NUMBER LON048**

Dear Mr. Silva:

This letter is in response to your request to reinstate your Nontransferable Lobster Operator Permit (NTLOP).

Authority-Lobster Operator Permit

Pursuant to California Code of Regulations (CCR), Title 14, Section 122(b)(4), applications for renewals of transferable and non-transferable lobster operator permits must be received by the California Department of Fish and Wildlife (Department) or, if mailed, postmarked no later than April 30 of each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code (FGC) Section 7852.2. Any person denied a permit under CCR, Title 14, Section 122(b)(4) may submit a written request for an appeal to the California Fish and Game Commission (Commission) explaining why their permit request should not be denied. Such requests must be received by the Commission within 60 days of the Department's denial.

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 dated April 10, 2020, you stated that you attempted to renew your permit at a Department office but were unable to do so because the office was closed to the public as a result of the Coronavirus pandemic. You also stated that you attempted to pay for your renewal over the phone but were told you could not do so. By the time your nephew was available to assist you with renewing your permit online, the March 31 deadline had already passed. You also stated that your intent was to make your permit active as part of your retirement plan.

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Department Findings

Department license records show that you last held a valid NTLOP during the 2018-2019 permit year, which made you eligible to renew the permit for the 2019-2020 permit year.

Department Determination

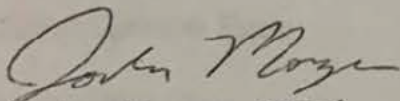
Based on the previously stated information, your request to reinstate your NTLOP is denied, because you last held a valid NTLOP in the 2018-2019 permit year. The Department received your request for reinstatement on April 17, 2020. FGC Section 7852.2(c) requires the Department to deny any application 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 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 NTLOP. If the Commission grants the renewal, it shall assess the applicable late fees, which amount to \$2,581.34. A fee schedule is enclosed.

If you have any questions or require further assistance, please contact Ms. Genalyn Lobel at (916) 928-5816 or Genalyn.Lobel@wildlife.ca.gov.

Sincerely,



Joshua Morgan, Chief
License and Revenue Branch

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

Ms. Genalyn Lobel
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 95834-1997
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 29, 2020

Mr. Robert J. Silva (L54695)
Fees Required for Reinstatement of a
Nontransferable Lobster Operator Permit (NTLOP)
Permit Number LON048

Prior Year Fees

2019-2020	Resident Commercial Fishing License	\$145.75
	NTLOP	\$820.50
	Late Fee (61 days to March 31, 2019)	<u>\$627.50</u>

Prior Year Fees Due

\$1,593.75

Prior Year permit fees must be paid before a 2020-2021 NTLOP can be issued.

Current Year Fees

2020-2021	Resident Commercial Fishing License	\$149.09
	NTLOP	<u>\$838.50</u>

Total Current Fees

\$987.59

Total Fees Due

\$2,581.34

If the Fish and Game Commission grants the renewal of the permit, payment of \$2,581.34 would be due.

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From: Jay Silva [REDACTED]@gmail.com>

Sent: Thursday, June 4, 2020 04:11 PM

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

Subject: Appeal for NTLOP

Warning: This email originated from outside of CDFW and should be treated with extra caution.

To whom it may concern,

My name is Robert J. Silva, I am requesting an appeal for your decision for renewing my NTLOP. The permit number is, L54695. Due to the COVID-19 epidemic I was unable to send in my fees on time.. as I am not good with computers I requested the help of my nephew to pay it unfortunately time lapses and I was late to make payment.

Based on my renewal fee payment history you can see I have almost never missed a payment. I am requesting to pay all fees and have my permit reinstated.

I am greatly appreciative of you taking the time to read this. I am happy to meet with you at any time to discuss this matter further...

Respectfully,
Robert J. Silva



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



October 2, 2020

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

Re: *In the Matter of Robert Silva*; Agency Case No. 20ALJ06-FGC

Dear Commissioners:

This letter is in response to Robert Silva's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his Lobster Operator Permit, #LON048 ("LOP"). The LOP was last valid during the 2018-19 fishing year. The Department will not be participating in this appeal and accordingly, does not object to the renewal of the LOP for the 2020-2021 fishing year, provided that he pays all applicable fees.

The fees that Mr. Silva must pay to renew the LOP 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 **\$2,581.34** (see attached fee schedule).

If you have any questions please contact me at the address above or by e-mail at David.Kiene@Wildlife.Ca.Gov.

Sincerely,
DocuSigned by:


03541091-10941095

DAVID KIENE
Senior Staff Counsel

Cc: Robert Silva



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd.
Sacramento, CA 95834-1997
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 29, 2020

Mr. Robert J. Silva (L54695)
Fees Required for Reinstatement of a
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Total Current Fees

\$987.59

Total Fees Due

\$2,581.34

If the Fish and Game Commission grants the renewal of the permit, payment of \$2,581.34 would be due.

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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

August 10, 2020

Mr. Nicholas B. Perrone
[REDACTED]

Subject: **NOTICE OF DENIAL FOR REINSTATEMENT OF SALMON VESSEL
PERMIT, PERMIT NUMBER SA0053**

Dear Mr. Perrone:

This letter is in response to your request to reinstate the Salmon Vessel Permit (SVP), Permit Number SA0053, for the F/V *Julie Ann* (FG00850).

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 July 27, 2020, you explained that your Commercial Boat Registration, Commercial Fishing License, and Commercial Fishing Salmon Stamp were all renewed but your SVP was not due to a mistake. You stated that it was an honest mistake and that you need the permit to make a living. You further explained that you have been fishing for 11 years and have not had a single violation.

Department Findings

Department license records show that the F/V *Julie Ann* last held a valid SVP in 2018-2019, which made you eligible to renew the permit for the 2019-2020 permit year.

Department Determination

Your request to reinstate the SVP for the F/V *Julie Ann* is denied because the F/V *Julie Ann* last held a valid SVP in the 2018-2019 permit year. The Department received your request for reinstatement of the SVP on July 27, 2020. 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 \$1,985.35. 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

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. Nicholas B. Perrone
Fees Required for Reinstatement for a
Salmon Vessel Permit (SVP)
Permit Number SA0053
F/V Julie Ann (FG00850)

Prior Year Fees	Permit Fees
2019-2020 SVP	\$ 45.84
Late Fee (61 days to March 31, 2020)	\$ <u>627.50</u>
Prior Year Fees Due	\$ 673.34
Current Year Fees	
2020-2021 Commercial Fishing License	\$ 149.09
Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 387.25
SVP	\$ 46.87
Late Fee (61 days to March 31, 2021)	\$ <u>641.25</u>
Total Current Fees Due	\$ 1,312.01
Total Fees Due	\$ 1,985.35

If the Fish and Game Commission should recommend approval, full payment of \$1,985.35 would be due.

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

To the fish and game commission:

2020 AUG 25 AM 7:57

This letter is my appeal to fish and game commission.

I did not know that my SVP salmon vessel permit did not get payed when I renewed the registration, commercial fishing license and salmon stamp.

This has been very stressful for me and my family. I need my permit to make a living. I have never had any violations with fish and game or the coast guard. This was a honest mistake not neglect please grant renewal of my SVP I am begging you. My boat was built specifically for salmon and the permit has been with the boat for a very long time

I have attached the letter I sent Ruth Flores and that she has sent back



Caption/owner Nicholas Perrone

Contact number [REDACTED]

Mailing address [REDACTED] [REDACTED] [REDACTED].



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



October 2, 2020

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

Re: *In the Matter of Nicholas Perrone*; Agency Case No. 20ALJ08-FGC

Dear Commissioners:

This letter is in response to Nicholas Perrone's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his Salmon Vessel Permit, #SA0053 ("SVP"). The SVP was last valid during the 2018-19 fishing year. The Fish and Game Commission ("Commission") received his appeal request on August 25, 2020. The Department will not be participating in this appeal and accordingly, does not object to the renewal of the SVP for the 2020-2021 fishing year, provided that he pays all applicable fees.

The fees that Mr. Perrone 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 **\$1,985.35** (see attached fee schedule).

If you have any questions please contact me at the address above or by e-mail at David.Kiene@Wildlife.Ca.Gov.

Sincerely,
DocuSigned by:


DAVID KIENE

Senior Staff Counsel

Cc: Nicholas Perrone



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd.
Sacramento, CA 95834
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GAVIN NEWSOM, Governor
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