

STAFF SUMMARY FOR FEBRUARY 7-8, 2018

16. ORAL ARGUMENTS BY DFW AND PACIFIC STAR SPORTFISHING**Today's Item****Information** ☒**Action** ☐

Hear oral arguments related to possible action in Executive Session on the potential suspension of Pacific Star Sportfishing, Inc.'s commercial passenger fishing vessel license.

Summary of Previous/Future Actions

- FGC rejected Pacific Star proposed decision Dec 6-7, 2017; San Diego
- **Today's oral arguments** **Feb 7-8, 2018; Sacramento**

Background

DFW filed an accusation (Exhibit 1) with the Commission against Pacific Star Sportfishing LLC and Pacific Star Sportfishing, Inc. (together Pacific Star). The accusation requested that the Commission suspend a commercial passenger fishing vessel license. Pacific Star filed a notice of defense. FGC staff referred the matter to the Office of Administrative Hearings (OAH); OAH conducted a hearing, and submitted a proposed decision for FGC consideration (Exhibit 2).

After receiving the proposed decision, DFW submitted a memo (Exhibit 3) opposing portions of the proposed decision. Pacific Star submitted a response to DFW's memo (Exhibit 4) advocating for adoption of the proposed decision.

At its Dec 2017 meeting, FGC voted to reject the proposed decision and decide the case independently. DFW and Pacific Star were each given 15 minutes to argue their positions at a future meeting; this agenda item is to allow the parties to make those arguments. After the parties present arguments to FGC, FGC will retire into closed session under agenda item 17 to deliberate on the matter and reach a decision.

Significant Public Comments

One comment thanking FGC for supporting effective enforcement of California's marine protected areas by rejecting the proposed decision in the case of Pacific Star Sportfishing (Exhibit 5)

Recommendation

FGC staff: Hear arguments from the parties and ask any clarifying questions directed to either DFW or Pacific Star.

Exhibits

1. [Accusation against Pacific Star, dated Nov 30, 2015](#)
2. [Proposed decision in the matter of the accusation against Pacific Star, dated Sep 26, 2017](#)
3. [DFW memo regarding the proposed decision in the matter of Pacific Star, received Nov 20, 2017](#)
4. [Pacific Star letter regarding the proposed decision in the matter of Pacific Star, received Dec 8, 2017](#)

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5. [Email from Wildcoast, Pacific Ocean Institute, and Heal the Bay, received Dec 13, 2017](#)

Motion/Direction (N/A)

1 DAVID KIENE, STAFF COUNSEL
1416 9TH ST, 12TH FLOOR
2 SACRAMENTO, CA 95814
(916) 651-7646
3 (916) 654-3805 (fax)
e-mail: David.Kiene@wildlife.ca.gov
4 State Bar No. 215721

5 Attorney for the DEPARTMENT OF FISH AND WILDLIFE¹

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8 OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE FISH AND GAME COMMISSION
9

10 In the Matter of the Accusation Against)
11)
12) ACCUSATION
13)
14 Pacific Star Sportfishing, LLC,)
Respondent.)
_____)

15
16 **PARTIES**

17 1. David Bess ("Complainant") is the Chief of the Law Enforcement Division for the
18 Department of Fish and Wildlife ("Department") and brings this Accusation solely in his official
19 capacity.

20
21 2. On or about February 24, 2015, the Department issued to Pacific Star Sportfishing, LLC
22 ("Respondent"), in which Christine Bullard is the sole member, a Commercial Passenger
23 Fishing Vessel Permit ("CPFVP") for its commercial passenger fishing vessel ("CPFV"), the
24 *Pacific Star*, a Commercial Boat Registration for the *Pacific Star*, and an Ocean Enhancement
25

¹ Effective January 1 2013, the Department of Fish and Game became the Department of Fish and Wildlife.
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Stamp (collectively, "Entitlements"). The Entitlements are in full force and effect at all times relevant in this Accusation. The Entitlements expire on March 31, 2016.

JURISDICTION

3. This Accusation is brought before the Fish and Game Commission ("Commission") under the authority of the following laws.

4. Fish and Game Code, section 86, which states:

"Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

5. Fish and Game Code, section 2000 ("Section 2000"), which states:

It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or regulations made pursuant thereto. Possession of a bird, mammal, fish, or reptile or parts thereof in or on the fields, forests, or waters of this state, or while returning therefrom with fishing or hunting equipment is prima facie evidence the possessor took the bird, mammal, fish or reptile or parts thereof.

6. Fish and Game Code, section 2002 ("Section 2002"), which states:

It is unlawful to possess any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of this code, or of any regulation made under it.

7. Fish and Game Code, section 2012 ("Section 2012"), which states:

All licenses, tags, and the birds, mammals, fish, reptiles, or amphibians taken or otherwise dealt with under this code, and any device or apparatus designed to be, and capable of being, used to take birds, mammals, fish, reptiles, or amphibians shall be exhibited upon demand to any person authorized by the department to enforce this code or any law relating to the protection and conservation of birds, mammals, fish, reptiles, or amphibians.

8. Fish and Game Code, section 5508 ("Section 5508"), which states:

It is unlawful to possess on any boat or to bring ashore any fish upon which the size or weight limit is prescribed in such a condition that its size or weight cannot be determined.

(Emphasis added.)

9. Fish and Game Code, section 5509 ("Section 5509"), which states:

It is unlawful to possess on any boat or to bring ashore any fish in such a condition that the species cannot be determined, except as otherwise provided in this code or regulations adopted pursuant thereto. The commission, subject to the provisions of Section 5508, may adopt regulations whereby fish taken by persons fishing from a vessel licensed pursuant to Section 7920 may be brought ashore in such a condition that the species cannot be determined.

(Emphasis added.)

10. Fish and Game Code, section 7147 ("Section 7147"), which states:

The owner or operator of a boat or vessel licensed pursuant to Section 7920 shall not permit any person to fish from that boat or vessel unless that person has, in his or her possession, a valid California sport fishing license and any required stamp, report card, or validation issued pursuant to this code.

11. Fish and Game Code, section 7857, subdivision (b) ("Section 7857"), which states:

The commission after notice and opportunity for hearing, may suspend, revoke, or cancel commercial fishing privileges for a period of time to be determined by the commission for the following reasons:

- (1) The person was not lawfully entitled to be issued the license, permit, or other entitlement.
- (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.
- (3) A violation of any federal law relating to the fishery for which the license, permit, or other entitlement was issued 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.

(Emphasis added.)

12. Fish and Game Code, section 7920, which states:

The owner of any boat or vessel who, for profit, permits any person to take fish, shall procure a commercial passenger fishing boat license. This article applies

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only to a boat or vessel whose owner or his or her employee or other representative is with it when it is used for fishing.

13. Fish and Game Code, section 7923 ("Section 7923"), which states:

The holder of a license shall keep a true record in the English language of all fish taken, and shall comply with such regulations as the commission may prescribe. Such a record and the information contained in it shall be confidential, and the record shall not be a public record.

14. Fish and Game Code, section 7924 ("Section 7924"), which states:

Licenses issued under this article are subject to forfeiture, suspension, or revocation for a violation of Section 7121 and for any offense for which a commercial fishing license may be forfeited, suspended, or revoked.

15. Fish and Game Code, section 12158.5, which states:

For the purpose of invoking any provision of this code, or any rule, regulation, or order made or adopted under this code, relating to the suspension, revocation, or forfeiture of any license or permit, a plea of nolo contendere or "no contest" to, or forfeiture of bail from, a charge of a violation of any provision of this code, or any rule, regulation, or order made or adopted under this code, is a conviction of a violation thereof.

16. California Code of Regulations, Title 14 ("Title 14"), section 27.50 ("Section 27.50"), which states in part:

This Section applies to take and possession of all 90 species of federally-managed groundfish, California sheephead, ocean whitefish, and all greenlings of the genus *Hexagrammos* in the Cowcod Conservation Areas. The Cowcod Conservation Areas are special Groundfish Management Areas where sport fishing regulations for these species are designed to minimize interaction with cowcod. Federal groundfish include, but are not limited to, rockfish, cabezon, lingcod, California scorpionfish, kelp greenling, and some species of sharks, skates and flatfish. For specific definitions, applicability, and procedures, see sections 1.91 and 27.20. For size limits, possession limits, and other regulations that apply to individual species, see specific sections beginning with Section 27.60.

...
(b) Seasons and depth constraints (except as provided in (c) below):

...
(2) March 1 through December 31: Open for only the species or species groups listed in (A) through (H) below, and only in waters shallower than 20 fathoms in depth as described by general depth contour lines.

(A) Nearshore rockfish, as defined in subsection 1.91(a)(1)

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1 17. Title 14, section 27.65 ("Section 27.65"), subdivision (b), which states:

2 Fish That May be Filleted: No person shall fillet on any boat or bring ashore as
3 fillets any fish, except in accordance with the following requirements:

4 (4) White sea bass: Fillets must be a minimum of 19 inches in length.
Each fillet shall bear intact a one-inch square patch of silver skin.

5 ...
6 (8) Rockfish: Fillets must have the entire skin attached.

7 18. Section 27.65, subdivision (c), which states:

8 Fish That May Not be Filleted, Steaked or Chunked: No person shall fillet, steak or cut
9 into chunks on any boat or bring ashore as fillets, steaks or chunks the following: any
10 species with a size limit unless a fillet size is otherwise specified in these regulations.
California halibut may be filleted or brought ashore as fillets south of Point Arena
(Mendocino County).

11 19. Title 14, Section 28.27, subdivision (d) ("Section 28.27(d)"), which states:

12 (d) Method of take [Lingcod]: When angling, gear is restricted to not more than two
13 hooks and one line. For purposes of this section, a hook is a single hook, or double or
treble hook with multiple points connected to a common shank.

14 20. Title 14, Section 28.28, subdivision (d) ("Section 28.28(d)"), which states:

15 (d) Method of take [Cabezon]: When angling, gear is restricted to not more than two
16 hooks and one line. For purposes of this section, a hook is a single hook, or double or
treble hook with multiple points connected to a common shank.

17 21. Title 14, Section 28.29, subdivision (d) ("Section 28.29(d)"), which states:

18 (d) Method of take [Greenling]: When angling, gear is restricted to not more than two
19 hooks and one line. For purposes of this section, a hook is a single hook, or double or
treble hook with multiple points connected to a common shank.

20 22. Title 14, Section 28.55, subdivision (d) ("Section 28.55(d)"), which states:

21 (d) Method of take [Rockfish]: When angling, gear is restricted to not more than two
22 hooks and one line. For purposes of this section, a hook is a single hook, or a double or
23 treble hook with multiple points connected to a common shank.

24 23. Title 14, section 28.65 ("Section 28.65"), which states in part:

25 Except as provided in this article, fin fish may be taken only on hook and line or
by hand. Any number of hooks and lines may be used in all ocean waters and
bays except:

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1 ...
2 (c) When rockfish (genus *Sebastes*), lingcod (*Ophiodon elongatus*), cabezon
3 (*Scorpaenichthys marmoratus*), or kelp or rock greenlings (*Hexagrammos*
4 *decagrammus* and *Hexagrammos lagocephalus*) are aboard or in possession,
where only one line with not more than two hooks may be used pursuant to
sections 28.55, 28.27, 28.28 or 28.29, respectively.

5 24. Title 14, section 195 ("Section 195"), which states in part:

6 (a) Records required by Sections 7923 and 8026 of the Fish and Game Code shall be
7 made on forms provided by the department . . . and hereafter referred to as
8 logbook for purposes of this section. The logbook shall include the following
information and be completed and available for inspection as specified in this
section:

9 (1) A full and correct record of fish taken, including species or specified
10 species groups, filled out before the trip is completed as provided in
11 subdivision 190(b). The names used for designating the species of fish
shall be those in common usage unless otherwise designated by the
department.

12 (2) The owner/operator copy of the logbook shall be maintained and kept on
13 the vessel for a period of one year, and upon request, shall be made
14 available for inspection by any authorized representative of the
Department.

15 (3) The numbered logbook shall be completed sequentially. A voided log
16 shall have the word "Void" plainly and noticeably written on the face of
the log.

17 (4) For months when no fishing activity occurred, a log shall be completed on
18 the last day of the month with an entry made clearly indicating that no
19 fishing activity occurred for the month specified by the owner/operator.
All logs shall be kept and delivered to the department as specified in
20 Section 190.

21 (5) A commercial passenger fishing vessel shall keep and submit logbooks
whether or not the fishing trip involves paying or non-paying anglers.

22
23 (b) The owner(s) and/or operator(s) of each vessel required to obtain a license under
24 Section 7920 of the Fish and Game Code shall post a notice in a prominent place
on the vessel giving information to fishermen on license requirements, bag limits,
25 and other pertinent information. This notice shall be furnished by the department.

- 1 (c) Both the vessel owner(s) and/or operator(s) shall be responsible for keeping
2 accurate records and insuring the vessel is in compliance with subdivisions (a)
3 and (b) above.
- 4 (d) All fishing activity records are confidential pursuant to Fish and Game Code
5 Sections 7923 and 8022 and Government Code Sections 6276 and 6276.10.
- 6 (e) Boat Limits: When two or more persons licensed or otherwise authorized to sport
7 fish in ocean waters off California or in the San Francisco Bay District, as defined
8 in Section 27.00, are angling for finfish in these waters aboard a vessel licensed
9 under Section 7920, fishing by these persons (to include vessel operator(s) and
10 crew members where licensed to sportfish under their own individual limits) may
11 continue until the passenger's boat limits of those finfish are taken and possessed
12 aboard the vessel as authorized under this section.
- 13 (1) For purposes of this section, the vessel operator(s) and crew members are
14 not passengers and may not take fish towards obtaining boat limits for
15 passengers except for casting, setting trolling gear, gaffing or netting fish,
16 but may take fish during a fishing trip for their personal use only. Vessel
17 operator(s) and crew members may assist passengers in other activities
18 including, but not limited to, obtaining bait, chumming, baiting and
19 untangling hooks and lines, identifying, dispatching, filleting, counting,
20 bagging and otherwise handling fish taken by passengers. Upon
21 completion of a fishing trip, the vessel operator(s) and crew members may
22 only possess fish that are part of their own personal bag limit not to exceed
23 authorized sportfishing daily bag and possession limits.
- 24 (2) Fish taken by operator(s) and crew members for personal use pursuant to
25 (e)(1) above must be separated from fish taken under a boat limit and
labeled in a manner that they can be identified as an individual operator's
or crew member's fish. Operator(s) and crew members are also prohibited
from giving all or part of their individual limit to any passenger during or
after a trip.
- (3) The authorization for boat limits aboard a vessel does not apply to fishing
trips originating in California where fish are taken in other jurisdictions.
- (4) A boat limit for a species or species group is equal to the number of
passengers aboard the vessel that are licensed or otherwise authorized to
sport fish in ocean waters off California or in the San Francisco Bay
District multiplied by the individual daily bag limit authorized for a
species or species group. For purposes of this section, the number of
passengers shall not include the vessel operator(s) and crew members. It is
unlawful to exceed the boat limit at any time.

- (5) Prior to the departure on a fishing trip of a vessel that is licensed under Fish and Game Code Section 7920, the number of fishers, to include passengers, guests, operators and crew who will be fishing, shall be recorded under "number of fishers" on the logbook for that trip. In addition, the number of vessel operator(s) and crew members who will fish for that trip shall be recorded in the space to the right of the operator's signature on the logbook.
- (6) Upon completion of a sport fishing trip aboard a vessel reporting under this section, each licensed or otherwise authorized angler may not possess more than the daily bag and possession limits. For the purposes of this section, a fishing trip is completed at the time a person disembarks from the vessel and individual possession limits apply.
- (7) Species for which no daily bag limit exists are not included in the boat limit.
- (f) Where boat limits are provided for in this section, the vessel operator(s) and crew members may be cited for violations occurring aboard the vessel, including but not limited to violations of the following:
- (1) Overlimits
 - (2) Possession of prohibited species
 - (3) Minimum size limits
 - (4) Fish taken out of season or in closed areas
25. Title 14, section 632 ("Section 632"), subdivision (a), which states in part:
- The areas specified in this section have been declared by the commission to be marine protected areas, marine managed areas, or special closures. Public use of marine protected areas, marine managed areas, or special closures shall be compatible with the primary purposes of such areas. MPAs, MMAs, and special closures are subject to the following general rules and regulations in addition to existing Fish and Game Code statutes and regulations of the commission, except as otherwise provided for in subdivision 632(b), areas and special regulations for use.
- ...
- (1)(A) State Marine Reserves: In a state marine reserve, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a scientific collecting permit issued by the department pursuant to Section 650 or specific authorization from the commission for research, restoration, or monitoring purposes.
26. Title 14, section 746, which states in part:

1 Except where revocation, suspension, transfer, reinstatement or waiver of renewal
2 requirement procedures are specifically provided for by the Fish and Game Code or
3 regulations made pursuant thereto, the commission, pursuant to the provisions of
4 Section 309 of the Fish and Game Code, shall comply with the following minimum
5 safeguards to afford each applicant, licensee or permittee procedural and substantive
6 due process when the commission considers revocation, suspension, transfer,
7 reinstatement or waiver of renewal requirements for a license or permit including
8 hunting and sport fishing license or permit privileges.

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

13 (1) The commission's president may appoint a commissioner, the
14 commission's legal counsel, a former Executive Director of the
15 commission, or a member of the State Bar of California with at least
16 ten years' experience in the active practice of law and determined
17 qualified by the president, to serve as a hearing officer.

18 (2) The hearing shall be held at such time and location determined by the
19 hearing officer with due consideration for the convenience of the
20 parties and the ends of justice. The hearing officer may engage in
21 exparte communications with the parties for the purpose of setting a
22 time and place of hearing.

23 (3) The commission shall notify the applicant, licensee or permittee, by
24 certified letter, of the commission's intent to consider the revocation or
25 suspension of his or her license or permit privileges. The certified
letter shall include the following information:

(A) Name of applicant, licensee or permittee and last known address
the Department of Fish and Game has on file.

(B) Date, time and place of scheduled hearing.

(C) Reason for potential commission action, including a statement as
to the date and fact of conviction.

(D) A copy of Section 746, Title 14, California Code of Regulations.

(E) A statement that the applicant, licensee or permittee has the right to
appear and to be represented by counsel.

1 (F) A statement that any continuance of the scheduled hearing date
2 may be obtained only through compliance with subsection (d) of
3 Section 746, Title 14, California Code of Regulations.

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

6 (5) The hearing shall be conducted by the hearing officer who shall control
7 the nature and order of the proceedings.

8 (6) At the hearing, the hearing officer shall read the conviction documents.
9 The department shall provide the hearing officer with the background
10 information regarding the violation and conviction and shall submit into
11 the record a copy of a document which includes the facts of the conviction
12 of a violation of regulation or statute.

13 (7) The applicant, licensee or permittee shall make his or her statement
14 regarding the violation and conviction, and may argue that extenuating
15 circumstances were such as to not warrant the loss of his or her license or
16 permit privileges.

17 (8) The hearing officer may examine any party or witness.

18 (9) Within 30 days of the conclusion of the hearing, the hearing officer shall
19 prepare and submit to the executive director a proposed decision which
20 shall include proposed findings or reasons for the commission's action.

21 (10) Upon receipt of the proposed decision, the commission shall provide
22 counsel or, if appearing pro se, the applicant, licensee or permittee, by
23 certified mail, a copy of the hearing officer's proposed decision.

24 (11) At a meeting of the commission, no later than 60 days following receipt of
25 the hearing officer's proposed decision, the commission shall consider
adoption of the proposed decision. The commission may by order adopt,
revise or reject the proposed decision. The commission shall serve counsel
or, if appearing pro se, the applicant, licensee or permittee, by certified
mail, a copy of the commission's order and decision. The order is final.

(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.

1 **FIRST CAUSE FOR DISCIPLINE**

2 27. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that on or
3 about June 13, 2014, in a criminal proceeding titled *People v. Robert Michael Bullard* in the
4 Superior Court of California, County of Santa Barbara, Case Number 1444988, **Robert Bullard**,
5 who was then an agent, servant, employee, and/or person acting under the Respondent's
6 direction or control, pled *nolo contendere* to a violation of Section 632, subdivision (a)(1)(A),
7 illegally fishing in a marine preserve, an area generally closed to taking and possessing living
8 marine resources, a violation for which a CPFVP may be revoked. The circumstances are as
9 follows:
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11 a. On or about May 18 and May 19, 2013, while employed by Respondent as the
12 Captain of the *Pacific Star*, Mr. Bullard, along with crew and passengers, illegally fished inside
13 the Santa Barbara Island State Marine Reserve.

14 b. On or about June 13, 2014, Mr. Bullard was sentenced for this violation, and
15 others described in this Accusation, as follows: fined \$2,500, placed on probation for three years,
16 and prohibited from fishing as a boat captain from July 1, 2014 through September 30, 2014 in
17 Channel Islands National Park.

18 **SECOND CAUSE FOR DISCIPLINE**

19
20 28. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that on or
21 about June 13, 2014, in a criminal proceeding titled *People v. Robert Michael Bullard* in the
22 Superior Court of California, County of Santa Barbara, Case Number 1444988, **Mr. Bullard**,
23 who was then an agent, servant, employee, and/or person acting under the Respondent's
24 direction or control, pled *nolo contendere* to a violation of Section 27.50, subdivision (b)(2),
25 fishing for rockfish in Cowcod Conservation Area in water deeper than 20 fathoms, a violation
for which a CPFVP may be revoked. The circumstances are as follows:

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1 a. On or about and between May 17, 2013 and May 19, 2013, while employed by
2 Respondent as the Captain of the *Pacific Star*, Mr. Bullard unlawfully took nearshore rockfish in
3 water deeper than 20 fathoms while inside the Cowcod Conservation Area.

4 b. On or about June 13, 2014, Mr. Bullard was sentenced for this violation, and
5 others described in this Accusation, as follows: fined \$2,500, placed on probation for three years,
6 and prohibited from fishing as a boat captain from July 1, 2014 through September 30, 2014 in
7 Channel Islands National Park.

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9 **THIRD CAUSE FOR DISCIPLINE**

10 29. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that on or
11 about June 13, 2014, in a criminal proceeding titled *People v. Robert Michael Bullard* in the
12 Superior Court of California, County of Santa Barbara, Case Number 1444988, **Mr. Bullard**,
13 who was then an agent, servant, employee, and/or person acting under the Respondent's
14 direction or control, pled no contest to a violation of Section 195, subdivision (c), inaccurately
15 reporting fish taken on board a CPFV, a violation for which a CPFVP may be revoked. The
16 circumstances are as follows:

17 a. In May, 2013, while employed by Respondent as the Captain of the *Pacific Star*,
18 Mr. Bullard failed to accurately identify and report on the skipper's log book the full and correct
19 record of fish taken, to wit: failure to list any landings of bocaccio copper, gopher, and window
20 rockfish.

21 b. On or about and between May 17, 2013 and May 18, 2013, Mr. Bullard failed to
22 accurately identify and report on the skipper's log book the full and correct record of fish taken,
23 to wit: failure to report 5 gill sharks; failure to report fish caught and consumed during the trip,
24 including fish deposited into a "kill box"; failure to report several rockfish caught inside the
25

1 SMR; failure to report small rockfish taken and used for bait; failure to report fish thrown back
2 into the ocean; and failure to report fish taken elsewhere on the trip by the crew and passengers.

3 d. On or about June 13, 2014, Mr. Bullard was sentenced for this violation, and
4 others described in this Accusation, as follows: fined \$2,500, placed on probation for three years,
5 and prohibited from fishing as a boat captain from July 1, 2014 through September 30, 2014 in
6 Channel Islands National Park.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 30. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that on or
10 about June 20, 2014, in a criminal proceeding titled *People v. Robert Michael Bullard* in the
11 Superior Court of California, County of Los Angeles, Case Number 4LG00289, **Mr. Bullard**,
12 who was then an agent, servant, employee, and/or person acting under the Respondent's
13 direction or control, pled *nolo contendere* to a violation of Section 7923, keeping false records of
14 fish taken on board a CPFV, a violation for which a CPFVP may be revoked. The circumstances
15 are as follows:

16 a. On or about and between May 17 and May 19, 2013, while employed by
17 Respondent as the Captain of the *Pacific Star*, Mr. Bullard unlawfully possessed over limits of
18 several different species of rockfish and sharks taken near and within the SMR and failed to
19 record such take. Mr. Bullard's skipper logs dated May 18 and May 19, 2013, which were filed
20 with the Department, do not reflect the actual number of captured rockfish.

21 b. On or about and between June 29 and July 1, 2013, Mr. Bullard unlawfully
22 possessed and failed to disclose multiple over limits of various species of rockfish. Of the total
23 fish permitted for a two-day fishing trip with twenty-six passengers, Mr. Bullard possessed an
24 over limit of 60 bocaccio rockfish, 31 sculpin, and 37 unspecified rockfish. Additionally, Mr.
25 Bullard possessed 28 undeclared bocaccio fillets stored in a freezer.

1 c. On or about June 29, 2013, while employed by Respondent as the Captain of the
2 *Pacific Star*, Mr. Bullard unlawfully possessed over limits of rockfish which he failed to disclose
3 and identify in the skipper's log. A total 226 of "unspecified rockfish" was recorded instead.

4 d. On or about June 30, 2013, while employed by Respondent as the Captain of the
5 *Pacific Star*, Mr. Bullard unlawfully possessed over limits of rockfish which he failed to disclose
6 and identify in the skipper's log. A total of 243 "unspecified rockfish" were recorded instead.

7 e. On or about July 1, 2013, while employed by Respondent as the Captain of the
8 *Pacific Star*, Respondent unlawfully possessed live sculpin, starry, vermillion, and copper
9 rockfish, and one dead vermillion, hidden within the vessel's live squid bait tanks, along with
10 frozen bocaccio fish fillets – all of which Respondent failed to disclose and identify on the
11 vessel's skipper's log.

12 f. On or about June 20, 2014, Mr. Bullard was sentenced for this violation, and
13 others described in this Accusation, as follows: convicted and ordered to pay a total of \$2,120 for
14 a fine and various fees.

16 FIFTH CAUSE FOR DISCIPLINE

17 31. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that on or
18 about June 20, 2014, in a criminal proceeding titled *People v. Robert Michael Bullard* in the
19 Superior Court of California, County of Los Angeles, Case Number 4LG00289, **Mr. Bullard**,
20 who was then an agent, servant, employee, and/or person acting under the Respondent's
21 direction or control, pled *nolo contendere* to a violation of Section 5508, possessing on any boat
22 or bringing ashore fish in such a condition that its size or weight cannot be determined, a
23 violation for which a CPFVP may be revoked. The circumstances are as follows:
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a. On or about July 1, 2013, while employed by Respondent as the Captain of the *Pacific Star*, Respondent unlawfully possessed fillets of white sea bass and halibut without the skin attached and cut into pieces, thus making the size and weight limit of the fish indeterminable. The halibut fillets were found frozen and hidden under bags of other frozen food items.

b. On or about June 20, 2014, Mr. Bullard was sentenced for this violation, and others described in this Accusation, as follows: convicted and ordered to pay a total of \$2,120 for a fine and various fees.

SIXTH CAUSE FOR DISCIPLINE

32. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that on or about June 20, 2014, in a criminal proceeding titled *People v. Robert Michael Bullard* in the Superior Court of California, County of Los Angeles, Case Number 4LG00289, **Mr. Bullard**, who was then an agent, servant, employee, and/or person acting under the Respondent's direction or control, pled *nolo contendere* to a violation of Section 5509, possessing on any boat or bringing ashore fish in such a condition that the species cannot be determined, a violation for which a CPFVP may be revoked. The circumstances are as follows:

a. On or about July 1, 2013, while employed by Respondent as the Captain of the *Pacific Star*, Mr. Bullard unlawfully possessed 63 fish fillets without the skin attached; thus making the species of the fish indeterminable. The fillets were found frozen and hidden under bags of other frozen food items.

b. On or about June 20, 2014, Mr. Bullard was sentenced for this violation, and others described in this Accusation, as follows: convicted and ordered to pay a total of \$2,120 for a fine and various fees.

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a. On or about July 1, 2013, while employed by Respondent as the Captain of the *Pacific Star*, Mr. Bullard possessed and failed to declare 28 bocaccio rockfish fillets and various halibut pieces during a vessel inspection, in violation of Fish and Game Code, section 2012.

34. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Mr. Bullard**, who was then an agent, servant, employee, and/or person acting under the Respondent's direction or control, violated Section 7147, a violation for which a CPFVP may be revoked. The circumstances are as follows:

a. On or about July 1, 2013, while employed by Respondent as the Captain of the *Pacific Star*, Mr. Bullard allowed passenger Jimmy Liu to fish aboard the vessel *Pacific Star* without possessing a valid California sport fishing license.

35. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Mr. Bullard**, who was then an agent, servant, employee, and/or person acting under the Respondent's direction or control, violated Section 195, subdivision (f)(4), a violation for which a CPFVP may be revoked. The circumstances are as follows:

1 a. On or about May 18, 2013, while employed by Respondent as the Captain of the
2 *Pacific Star*, Mr. Bullard assisted passengers in the Santa Barbara Island State Marine Reserve in
3 taking and possessing rockfish.

4
5 **TENTH CAUSE FOR DISCIPLINE**

6 36. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Phillip**
7 **Ornealas**, who was then an agent, servant, employee, and/or person acting under the
8 Respondent's direction or control, violated Sections 2000 and 2002, violations for which a
9 CPFVP may be revoked. The circumstances are as follows:

10 a. On or about May 18, 2013, while employed by Respondent as a deckhand aboard
11 the *Pacific Star*, Mr. Ornealas and an unidentified passenger took and possessed rockfish
12 illegally by using an illegal device called a "Gannon" which consists of a fishing line with more
13 than two hooks and which is prohibited pursuant to Section 28.55(d).

14
15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 37. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Mr.**
17 **Ornealas**, who was then an agent, servant, employee, and/or person acting under the
18 Respondent's direction or control, violated Section 195, subdivision (f)(4), a violation for which
19 a CPFVP may be revoked. The circumstances are as follows:

20 a. On or about May 18, 2013, while employed by Respondent as a deckhand aboard
21 the *Pacific Star*, Mr. Ornealas assisted passengers in the Santa Barbara Island State Marine
22 Reserve in taking and possessing rockfish.

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 38. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Mr.**
3 **Ornealas**, who was then an agent, servant, employee, and/or person acting under the
4 Respondent's direction or control, violated Sections 2000 and 2002, violations for which a
5 CPFVP may be revoked. The circumstances are as follows:

6 a. On several occasions on or about May 19, 2013, while employed by Respondent
7 as a deckhand aboard the *Pacific Star*, Mr. Ornealas and an unidentified passenger took and
8 possessed fish by illegally using a gannon while rockfish, lingcod, and/or greenlings were
9 aboard, a method of take prohibited pursuant to Section 28.65(c).

10
11 **THIRTEENTH CAUSE FOR DISCIPLINE**

12 39. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Phillip**
13 **Van Holder**, who was then an agent, servant, employee, and/or person acting under the
14 Respondent's direction or control, violated Sections 2000 and 2002, violations for which a
15 CPFVP may be revoked. The circumstances are as follows:

16 a. On or about May 18, 2013, while employed by Respondent as a deckhand aboard
17 the *Pacific Star*, Mr. Van Holder and an unidentified passenger took and possessed rockfish by
18 illegally using a Gannon, a method of take prohibited pursuant to Section 28.55(d).

19
20 **FOURTEENTH CAUSE FOR DISCIPLINE**

21 40. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Mr.**
22 **Van Holder**, who was then an agent, servant, employee, and/or person acting under the
23 Respondent's direction or control, violated Section 195, subdivision (f)(4), a violation for which
24 a CPFVP may be revoked. The circumstances are as follows:

1 a. On or about May 18, 2013, while employed by Respondent as a deckhand aboard
2 the *Pacific Star*, Mr. Van Holder assisted passengers in the Santa Barbara Island State Marine
3 Reserve in taking and possessing rockfish.

4
5 **FIFTEENTH CAUSE FOR DISCIPLINE**

6 41. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Mr.**
7 **Van Holder**, who was then an agent, servant, employee, and/or person acting under the
8 Respondent's direction or control, violated Sections 2000 and 2002, violations for which a
9 CPFVP may be revoked. The circumstances are as follows:

10 a. On several occasions on or about May 19, 2013, while employed by Respondent
11 as a deckhand aboard the *Pacific Star*, Mr. Van Holder and an unidentified passenger took and
12 possessed rockfish by illegally using Gannons, a method of take prohibited pursuant to Section
13 28.55(d).

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

15 42. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Jason**
16 **Evans**, who was then an agent, servant, employee, and/or person acting under the Respondent's
17 direction or control, violated Section 195, subdivision (f)(4), a violation for which a CPFVP may
18 be revoked. The circumstances are as follows:

19 a. On or about May 18, 2013, while employed by Respondent as a deckhand aboard
20 the *Pacific Star*, Mr. Evans assisted passengers in the Santa Barbara Island Marine Reserve in
21 taking and possessing rockfish.

22
23 **SEVENTEENTH CAUSE FOR DISCIPLINE**

24 43. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Mr.**
25 **Evans**, who was then an agent, servant, employee, and/or person acting under the Respondent's

1 direction or control, violated Sections 2000 and 2002, violations for which a CPFVP may be
2 revoked. The circumstances are as follows:

3 a. On several occasions on or about May 19, 2013, while employed by Respondent
4 as a deckhand aboard the *Pacific Star*, Mr. Evans and an unidentified passenger took and
5 possessed fish by illegally using Gannons while rockfish, lingcod, and/or greenlings were
6 aboard, a method of take prohibited pursuant to Section 28.65(c).

8 EIGHTEENTH CAUSE FOR DISCIPLINE

9 44. Respondent is subject to disciplinary action under Sections 7924 and 7857 in that **Rick**
10 **Slavkin**, who was then an agent, servant, employee, and/or person acting under the Respondent's
11 direction or control, violated Section 195, subdivision (f)(4), a violation for which a CPFVP
12 may be revoked. The circumstances are as follows:

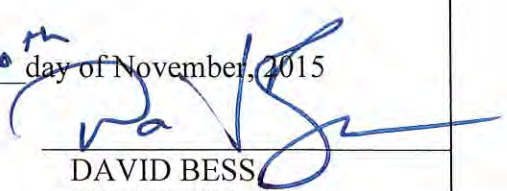
13 a. On or about May 18, 2013, while employed by Respondent as a captain aboard
14 the *Pacific Star*, Mr. Slavkin took the *Pacific Star* into the Santa Barbara Island State Marine
15 Reserve, where passengers and/or crew of the *Pacific Star* took and possessed various fish
16 species.

1 **PRAYER**

2 WHEREFORE, Complainant prays that a hearing be held on the charges and that
3 thereafter the Fish and Game Commission issues a decision:

- 4 (1) Suspending Respondent's CPFVP for five years.
5 (2) Taking such other and further action as may be deemed just and proper.
6

7 Dated this 30th day of November, 2015

8 
9 DAVID BESS
10 COMPLAINANT
11 CHIEF, LAW
12 ENFORCEMENT
13 DIVISION
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VERIFICATION

I, David Bess, the undersigned, say:

I am a party to this action; the above document is true of my own knowledge, except as to the matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the above is true and correct and that this declaration was executed on November __, 2015, at 1416 Ninth St., Sacramento, CA 95814.

Date:

Nov 30, 2015



DAVID BESS

Declarant

BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PACIFIC STAR SPORTFISHING, LLC,
& PACIFIC STAR SPORTFISHING,
INC.,

Respondents.

Case No. 15ALJ08-FGC

OAH No. 2017040661

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on July 18 and 19, 2017.

David Kiene, Senior Staff Counsel, Department of Fish and Wildlife (Department), represented complainant David Bess, Chief of the Law Enforcement Division of the Department.

Gary M. Bright, Esq., Bright & Powell, represented respondent Pacific Star Sportfishing, LLC and its successor by merger, respondent Pacific Star Sportfishing, Inc. (together Pacific Star Sportfishing).

At the start of the hearing, complainant amended the Accusation under Government Code section 11507 as follows: (a) page 1, line 12: add "& Pacific Star Sportfishing, Inc." (b) page 2, line 1: after the period, add "On May 20, 2016, Pacific Star Sportfishing, LLC and Pacific Star Sportfishing, Inc., merged. Both Pacific Star Sportfishing, LLC (the disappearing entity) and Pacific Star Sportfishing, Inc. (the surviving entity) are Respondents in this action." (c) page 21, line 4: delete "Respondent's" and replace it with "Respondents." Respondents did not object to the amendments.

During closing arguments, complainant's counsel provided a table summarizing certain evidence, which was marked for identification as exhibit 28, but not admitted. After the hearing, the record was held open for briefing. Complainant filed a brief on August 16, 2017, and respondents filed a brief on August 28, 2017. They were marked for identification as exhibit 29 and exhibit J, respectively, but not admitted.

The matter was submitted on August 28, 2017.

SUMMARY

Complainant requests that the Fish and Game Commission (Commission) suspend Pacific Star Sportfishing's commercial passenger fishing vessel license for five years, due to alleged unlawful fishing practices in 2013 aboard the *Pacific Star*, the company's commercial sportfishing boat. Pacific Star Sportfishing asserts that the requested discipline is unwarranted, and would be tantamount to revoking the license due to the financial impact of such a long suspension. A preponderance of the evidence established cause for suspension, but not for five years. Instead, the appropriate level of discipline is a two-year suspension, stayed, with five years' probation and an actual 90-day suspension.

FACTUAL FINDINGS

Jurisdictional Facts

1. Pacific Star Sportfishing, LLC was organized as a California limited liability company in March 2008. In May 2016, it merged with Pacific Star Sportfishing, Inc., with the corporation designated as the surviving entity. Christine Bullard is the President and Secretary of the corporation, and was the sole member of the limited liability company.
2. Before the merger, Pacific Star Sportfishing, LLC had a Department-issued commercial passenger fishing vessel license, commercial boat registration, and Ocean Enhancement Stamp, allowing it to take fee-paying passengers aboard its boat, the *Pacific Star*, to sport fish.
3. On November 30, 2015, complainant filed an Accusation in his official capacity, requesting that the Commission suspend Pacific Star Sportfishing, LLC's commercial passenger fishing vessel license for five years, based on alleged violations of the Fish and Game Code and supporting regulations.
4. Pacific Star Sportfishing, LLC submitted a notice of defense, dated December 7, 2015.
5. After the merger, Pacific Star Sportfishing, Inc. became the operator of the *Pacific Star*, but the Department still renewed the commercial passenger fishing vessel license, commercial boat registration, and Ocean Enhancement Stamp under the limited liability company's name, not under the corporation's name. The license and other entitlements are set to expire on March 31, 2018, unless renewed. To account for the merger, complainant amended the Accusation at the hearing to add the corporation as a respondent.

Investigation in May 2013

6. In February 2013, the Department received a citizen tip regarding alleged Fish and Game Code violations aboard the *Pacific Star*. To investigate, two Department wardens,

Anthony Marrone and Gregory Grinton, signed up as passengers for a two-and-a-half day sportfishing trip aboard the boat from May 17 through 19, 2013. Working undercover, they arrived at Pierpoint Landing in Long Beach the afternoon of May 17, 2013, and were directed to carry their fishing gear and other personal items to the *Pacific Star*. Once there, they introduced themselves to the captain, Robert Michael Bullard – Christine Bullard’s husband – and asked if he could look over their fishing equipment. He referred them to another person on board, identified as “Garr,” who looked at their equipment and suggested they might want to buy more hooks because they may be using “five hook sliders” on the trip. He also stated, “I don’t know exactly where you guys will be going, maybe around the islands, maybe in some areas you’re not supposed to, but whatever happens on the boat stays on the boat.”

7. Marrone and Grinton left the boat, and returned that evening. They boarded the *Pacific Star* at about 8:00 p.m. and signed a passenger galley list, which listed 24 passengers, including them. Each passenger was assigned a sack number to keep track of the fish the passenger caught.

8. Captain Bullard addressed the passengers about an hour later. He introduced the crewmembers, identifying them as Captain Rick (Rick Scott Slavkin, the second captain), Chef Tommy (Thomas Michael Rynski), Deckhand Phil (Philip Ornelas),¹ Deckhand Jason (Jason Evans), and “Pinhead” Phillip (Phillip Van Holder).² Christine Bullard was not on board; she generally performed onshore tasks for the business, and did not go on the boat’s fishing trips. “Garr” was also not on board. After being introduced, Evans described what he called a “kill box” on the boat, and stated passengers could place any unwanted fish in it for Rynski to cook for one of the lunches. The only Department regulation mentioned during the address concerned the size limits for lingcod.

9. The *Pacific Star* traveled overnight toward San Nicholas Island, and passengers started fishing early the next day near the island, and then near the Santa Barbara Island State Marine Reserve. Those areas are within a larger Cowcod Conservation Area, in which fishing is subject to depth, species, and seasonal constraints. (Cal. Code Regs., tit. 14, § 27.50.) Passengers landed dozens of rockfish, a halibut, and six sharks, one of which was thrown back. While fishing, Marrone and Grinton saw numerous other passengers using “gannons,” which are fishing lines containing more than two hooks. Fishing with gannons is prohibited when rockfish, lingcod, cabezon, and kelp or rock greenlings are aboard or in possession. (Cal. Code Regs., tit. 14, § 28.65, subd. (c).)

10. Marrone and Grinton never saw crewmembers attempt to stop passengers from using gannons, provide passengers with information about legal fishing methods, or take

¹ The Accusation uses the spelling “Phillip Ornealas,” but a Department investigation report uses the spelling “Philip Ornelas.”

² The record includes some references to the last name “Vanhooser” instead of “Van Holder.”

steps to ensure compliance with individual bag limits or vessel limits. Instead, they saw Evans and Van Holder help passengers catch and remove fish from the gannons. Marrone also observed and filmed Captain Bullard watching three rockfish being brought aboard on a single line that appeared to contain five hooks.

11. In addition, Marrone saw crewmembers place several smaller rockfish in the metal kill box, while placing larger fish in the passengers' burlap sacks. After seeing this several times, it was apparent the fish placed in the kill box were not being added to the passengers' individual rockfish bag limits, or the total boat limit of fish retained. Marrone also saw Evans and several passengers filleting multiple smaller rockfish from the kill box to use as bait. Some fish from the kill box were also prepared by the boat's cook and served to passengers.

12. Early in the evening on May 18, 2013, Marrone's Global Positioning System (GPS) device indicated the *Pacific Star* entered the Santa Barbara Island State Marine Reserve. According to Captain Bullard's hearing testimony, he was napping at the time, and Captain Slavkin was piloting the boat. Marine reserves "protect habitat and ecosystems, conserve biological diversity, provide a sanctuary for fish and other sea life, enhance recreational and educational opportunities, provide a reference point against which scientists can measure changes elsewhere in the marine environment, and may help rebuild depleted fisheries." (Fish & Game Code, § 2851, subd. (f).)³ Thus, the reserves, including the Santa Barbara Island State Marine Reserve, are closed to all fishing. (Cal. Code Regs., tit. 14, § 632.)

13. As Marrone was standing on the stern deck, he heard Captain Slavkin say to a passenger, "We're on the border of the good and bad area." Grinton also heard Captain Slavkin telling another passenger he had lied to the captain of another boat about the *Pacific Star's* location. The *Pacific Star* stopped, and crewmembers advised passengers they were free to start fishing. Passengers were using weighted fishing lines, and were fishing on the ocean bottom, based on the species of fish brought to the boat.

14. Marrone and Grinton estimated that passengers caught over 150 rockfish and several lingcod during the two hours the *Pacific Star* was inside the reserve, mostly using gannons. They saw Evans, Ornelas, Van Holder, and Captain Bullard assisting passengers with removing rockfish from lines containing more than two hooks. One passenger landed five rockfish at once on several occasions, with assistance from Evans and Ornelas. Crewmembers continued to place fish into the kill box, filleted some of those fish, and used them to feed passengers or crew, or for bait. None of those fish were added to the passengers' individual bag limits, or to the total boat limit of fish retained. Crewmembers also stomped on the unused portions of fish carcasses, causing them to sink when discarded into the ocean. Grinton heard Captain Slavkin tell Ornelas to make sure the carcasses did not float.

³ Undesignated statutory references are to the Fish and Game Code.

15. That evening, the *Pacific Star* anchored in a cove on the lee side of Santa Barbara Island. Crewmembers began filleting fish for passengers, and Evans and Ornelas did not leave the skin attached to several rockfish fillets. After processing, the fish were put into milk crates labeled with passenger sack numbers and stored below deck. Crewmembers did not announce the number of fish caught, thrown back, retained, or filleted. Marrone and Grinton saw several individually labeled milk crates containing what appeared to be more than 10 rockfish, each passenger's rockfish limit for the day. As the passengers were eating dinner, Marrone also saw Rynski cook several rockfish fillets for a passenger, with no evidence the cooked fish was counted toward the passenger's individual limit or the boat's overall limit.

16. Early the next morning, the *Pacific Star* spent two and a half hours fishing outside the Santa Barbara Island State Marine Reserve, but then moved inside it again, spending 65 minutes there. Upon arriving in the reserve, *Pacific Star* crew instructed passengers to begin fishing. Using mostly gannons, passengers caught approximately 30 rockfish, five lingcod, and six sheephead inside the reserve. On three occasions, Marrone caught two rockfish and once, and asked crewmembers to keep one and return the other to the water. Each time, the crewmembers put one fish in the kill box, and the other in Marrone's burlap sack.

17. The *Pacific Star* then moved outside the reserve, continued to stop in various locations between 11:00 a.m. and 4:00 p.m. Grinton and Marrone continued to witness Evans, Ornelas, and Van Holder assist passengers in catching fish with gannons. Crewmembers placed the fish into the passengers' burlap sacks or the kill box, and no rockfish brought aboard were released. At 4:00 p.m., crewmembers filleted the fish, and did not leave skin patches on some of them.

18. The *Pacific Star* returned to Pierpoint Landing in Long Beach at 8:00 p.m. on May 19, 2013. Marrone and Grinton left the vessel with a total of 51 rockfish and one sand dab.

Inspection in July 2013

19. On July 1, 2013, the *Pacific Star* returned to Long Beach with 26 passengers after another multi-day fishing trip. Captain Bullard, Captain Slavkin, and a slightly larger crew were aboard. Upon its return, several Department wardens inspected the vessel and interviewed passengers and crew at the dock. After demanding to inspect all fish on the boat, the wardens found that Captain Bullard had understated the amount of fish taken on official logbooks for the trip. For instance, Captain Bullard told one warden that passengers had caught the limit of bocaccio rockfish, which was 156 fish, but trip logbooks did not record any catch of bocaccio. Similarly, the logbooks underreported the number of California scorpionfish (sculpin) and unspecified rockfish by 31 and 88 fish, respectively.

20. During the inspection, Captain Bullard failed to declare 28 frozen bocaccio rockfish fillets and a bag of halibut pieces that a warden found in a chest freezer on the boat's

upper deck. When asked about the bocaccio fillets, Captain Bullard told a warden he thought it would be better if the warden found the fillets himself. In addition, wardens found 63 other fillets without skin attached, preventing them from determining the species of those fish. Wardens also inspected a live bait tank and found 19 undeclared whole rockfish. When asked about those fish, Captain Bullard stated the crew had caught a total of 45 fish, given 26 to passengers, and kept the other 19.

21. Counting all of the fish on board, Department wardens determined the *Pacific Star* possessed an over limit of 60 bocaccio rockfish, plus the 28 frozen bocaccio fillets found in the chest freezer. At two fillets per fish, those frozen fillets added another 14 Bocaccio to the over limit total. The wardens also determined the vessel possessed an over limit of 31 California scorpionfish, and 37 unspecified rockfish. Those totals excluded the 63 fillets for which the species of fish could not be determined.

22. One warden asked Captain Bullard about his understanding of how many hooks may be used when taking rockfish or when rockfish are on board. Captain Bullard replied, "You can't use more than two hooks." When asked, Captain Slavkin and Rynski stated their understanding was the same as Captain Bullard's.

23. The wardens also interviewed passengers, and determined that one, Jimmy Liu, did not have a California fishing license in his possession, despite fishing during the trip. At the hearing, complainant stipulated Liu had purchased a fishing license; he just did not bring it with him on the trip.

Criminal Convictions

24. On June 13, 2014, after pleading nolo contendere in the Superior Court of California, County of Santa Barbara, Case No. 1444988, Captain Bullard was convicted of unlawfully fishing inside the Santa Barbara Island State Marine Reserve (Cal. Code Regs., tit. 14, § 632, subd. (a)(1)(A)), unlawfully taking nearshore rockfish from waters deeper than 20 fathoms in a California Cowcod Conservation Area (Cal. Code Regs., tit. 14, § 27.50, subd. (b)(2)), and unlawfully failing to identify and report on the skipper's logbook the full and correct record of fish taken (Cal. Code Regs., tit. 14, §195, subd. (c)). The three misdemeanor convictions arose from the *Pacific Star*'s fishing trip on May 17 through 19, 2013. The Court suspended imposition of sentence and placed him on unsupervised probation for three years, imposed a \$2,500 fine, and prohibited him from fishing as a boat captain from July 1 through September 30, 2014, in the Channel Islands National Park.

25. On April 28, 2014, after pleading nolo contendere in the Superior Court of California, County of Los Angeles, Case No. 4LG00289, Captain Bullard was convicted of unlawfully possessing fish upon which a size or weight limit is prescribed in such a condition as its size or weight could not be determined (§ 5508), unlawfully possessing fish in such a condition as the species could not be determined (§ 5509), and failing to keep a true record of all fish taken (§ 7923). The misdemeanor convictions resulted from the Department inspection of the *Pacific Star* on July 1, 2013. The court imposed fines, fees, and

assessments totaling \$2,120 for the violation of section 5508, and suspended the sentence on the other violations.

Pacific Star Sportfishing's Evidence

26. Captain Bullard testified he received his captain's license in 1978, and has had no violations or citations against it. He has been operating the *Pacific Star* since 2000, and there have been no fishing violations or citations involving the boat apart from those in 2013, despite Department inspections about once per year. The Department boarded the boat last season near San Nicholas Island and "everything was fine." He attributed the logbook violations to Captain Slavkin and the crew, and the passenger use of gannons and over limits of fish largely to deckhands. He concentrated on the bridge and boat safety, and paid his crew to run the deck for him. Still, he accepted responsibility for the violations in his criminal pleas. He is still the *Pacific Star's* captain, but "cleaned house" on the crew, including Captain Slavkin, and has an entirely new crew now. He and his wife also purchased a more advanced navigation system to help pinpoint the boat's location and fishing depth. He no longer entrusts completing the logbooks to others, and does a better job himself.

27. Christine Bullard testified she is the "behind-the-scenes office manager" for Pacific Star Sportfishing, and solely owns the business because starting it involved a large investment from her side of the family. According to her, she was not involved in the violations, and had no way of knowing about them from onshore, and therefore does not feel responsible for them. She also blames Captain Slavkin and the other crewmembers more for the violations than she blames her husband.

28. She further testified that once she learned of the violations, she acted swiftly to correct them by replacing the entire crew and purchasing the new navigation system, as described in her husband's testimony. The new crewmembers are shown laminated cards describing the relevant fishing regulations, and she and her husband have no tolerance for violations. She asserted even a one-year suspension would be devastating financially, because the boat is her family's sole means of financial support, and she and her husband could not meet those obligations without income from sportfishing trips. The costs of maintaining, insuring, and docking the *Pacific Star* are high, regardless of whether it ever leaves the dock. There is also an existing mortgage on the boat, and income from sportfishing trips pays that debt. Furthermore, it is a dedicated fishing boat, and could not be used for other purposes, such as for harbor cruises.

29. John Elder, Captain Bullard's longtime friend, testified he has fished aboard the *Pacific Star* once a year for the past decade, and that Captain Bullard runs a high-quality fishing operation. Elder is a former sportfishing boat captain, and was unaware of any violations of fishing laws or regulations on his *Pacific Star* fishing trips. Robert Stevens, a retired police officer and sportfishing boat captain, testified he has been aboard the *Pacific Star* multiple times over the last four years, and witnessed briefings to passengers on the applicable fishing rules, and scrupulous adherence to fishing regulations.

LEGAL CONCLUSIONS

Legal Standards

1. A commercial passenger fishing vessel license is “subject to forfeiture, suspension, or revocation . . . for any offense for which a commercial fishing license may be forfeited, suspended, or revoked.” (§ 7924.) The offenses subjecting a commercial fishing license to suspension, revocation, or cancellation include “[a] violation of th[e] [Fish and Game] [C]ode, 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.” (§ 7857, subd. (b)(2).) Accordingly, the Commission may suspend Pacific Star Sportfishing’s license for the same offenses.

2. Pacific Star Sportfishing’s license is a nonprofessional license, because it does not have extensive educational, training, or testing requirements similar to a professional license. (See *Mann v. Dept. of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) To the contrary, a commercial passenger fishing vessel license “shall be issued” to the holder of a commercial boat registration who simply applies for the license and pays a fee. (§ 7921.) To impose discipline on such a nonprofessional license, complainant must prove cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917; Evid. Code, § 115.) A preponderance of the evidence means “‘evidence that has more convincing force than that opposed to it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Causes for Discipline

3. The evidence established that Captain Bullard and his crew were acting as the employees or agents of Pacific Star Sportfishing during the fishing trips at issue. As employees or agents, their violations on those trips subject Pacific Star Sportfishing itself to disciplinary action. (§§ 7924, 7857, subd. (b)(2).) The Accusation includes 18 alleged causes for discipline against Pacific Star Sportfishing for the violations of its employees or agents, all of which have merit.

FIRST THROUGH THIRD CAUSES FOR DISCIPLINE

4. The First through Third Causes for Discipline are based on Captain Bullard’s convictions in the Superior Court of California, County of Santa Barbara, Case No. 1444988. The three charged offenses in that case were for violations of regulations promulgated under the Fish and Game Code. (Factual Finding 24.) Captain Bullard’s nolo contendere pleas to those charges are convictions for disciplinary purposes (§ 12158.5), and those convictions are “conclusive evidence of [his] guilt of the offense[s] charged.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; see also *Robbins v Davi* (2009) 175 Cal.App.4th 118, 126.) Therefore, the

convictions conclusively establish these three causes for discipline. (§§ 7924, 7857, subd. (b)(2).)

FOURTH THROUGH SIXTH CAUSES FOR DISCIPLINE

5. The Fourth through Sixth Causes for Discipline are based on Captain Bullard's convictions in the Superior Court of California, County of Los Angeles, Case No. 4LG00289. The evidence established these causes for discipline, for the same reasons as the first three causes for discipline. Captain Bullard's convictions were for Fish and Game Code violations (Factual Finding 25), and the convictions are conclusive evidence of his guilt of those offenses. (*Arneson v. Fox*, *supra*, 28 Cal.3d at p. 449; see also *Robbins v Davi*, *supra*, 175 Cal.App.4th at p. 126.)

SEVENTH CAUSE FOR DISCIPLINE

6. The Seventh Cause for Discipline alleges Captain Bullard violated section 2012 by failing to declare 28 bocaccio rockfish and various halibut pieces to Department wardens on July 1, 2013. Under section 2012, "[a]ll . . . fish . . . taken or otherwise dealt with under this code [i.e. the Fish and Game Code] . . . shall be exhibited upon demand to any person authorized by the [D]epartment to enforce the code"

7. The evidence established that Captain Bullard did not declare the bocaccio fillets and halibut pieces, despite a demand from a Department warden to inspect all fish aboard the *Pacific Star*. (Factual Finding 20.) As to at least the bocaccio fillets, this appears to have been a deliberate omission, because Captain Bullard told a warden he thought it would be better if the warden found those fillets himself. (*Ibid.*) This is sufficient evidence of a violation.

EIGHTH CAUSE FOR DISCIPLINE

8. The Eighth Cause for Discipline alleges Captain Bullard violated section 7147 by allowing a passenger, Jimmy Liu, to fish aboard the *Pacific Star* on the trip ending July 1, 2013, without possessing a California fishing license. Under section 7147, "[t]he owner or operator of a boat or vessel licensed pursuant to Section 7920 shall not permit any person to fish from that boat or vessel unless that person has, in his or her possession, a valid California sport fishing license and any required stamp, report card, or validation issued pursuant to this code."

9. The evidence established that Liu did not have a California fishing license in his possession during the trip ending July 1, 2013, but nonetheless fished on that trip. (Factual Finding 23.) Although there is no dispute Liu purchased a fishing license, he had to have it with him on the trip, and did not. As the *Pacific Star's* operator, Captain Bullard is responsible for the violation. (§ 7147.)

NINTH CAUSE FOR DISCIPLINE

10. The Ninth Cause for Discipline alleges Captain Bullard violated California Code of Regulations, title 14, section 195, subdivision (f)(4), by assisting passengers in taking and possessing rockfish inside the Santa Barbara Island State Marine Reserve on May 18, 2013. Under that regulation, “[w]here boat limits are provided for in this section, the vessel operator(s) and crew members may be cited for violations occurring aboard the vessel, including but not limited to violations of the following: [¶] . . . [¶] (4) Fish taken out of season or in closed areas.”

11. Captain Bullard was an operator of the *Pacific Star*, even if his second captain (i.e., Captain Slavkin) was piloting the boat when it entered the marine reserve on May 18, 2013. The area was closed to all fishing, but passengers still caught and kept over 150 rockfish while inside the reserve. (Factual Findings 12-14.) This evidence, coupled with Captain Bullard’s conviction for unlawfully fishing inside the reserve (Factual Finding 24), is sufficient to establish a violation.

TENTH THROUGH TWELFTH CAUSES FOR DISCIPLINE

12. The Tenth and Twelfth Causes for Discipline allege Ornelas violated sections 2000 and 2002 when he and unidentified passengers took and possessed rockfish using gannons on May 18 and May 19, 2013, respectively. Sections 2000 and 2002 prohibit fishing in violation of the Fish and Game Code and regulations promulgated under it. The Eleventh Cause for Discipline asserts Ornelas violated California Code of Regulations, title 14, section 195, subdivision (f)(4) by assisting passengers in taking and possessing rockfish inside the Santa Barbara Island State Marine Reserve on May 18, 2013.

13. Marrone’s and Grinton’s observations aboard the *Pacific Star* established these violations. They observed Ornelas assisting passengers using gannons, which are a prohibited means of catching rockfish. (Factual Findings 10, 14, and 17.) They also observed him assisting passengers in landing rockfish inside the marine reserve. (Factual Finding 14.)

THIRTEENTH THROUGH FIFTEENTH CAUSES FOR DISCIPLINE

14. The Thirteenth and Fifteenth Causes for Discipline are the same as the Tenth and Twelfth, respectively, except that they reference Van Holder as assisting passengers using gannons, instead of Ornelas. The Fourteenth Cause for Discipline is the same as the Eleventh, except that it references Van Holder instead of Ornelas as assisting passengers inside the Santa Barbara Island State Marine Reserve on May 18, 2013. Marrone’s and Grinton’s observations aboard the *Pacific Star* established these violations as to Van Holder, just as they did as to Ornelas. (Factual Findings 10, 14, and 17.)

SIXTEENTH AND SEVENTEENTH CAUSES FOR DISCIPLINE

15. The Sixteenth Cause for Discipline is the same as the Eleventh, except that it references Evans instead of Ornelas as assisting passengers inside the Santa Barbara Island State Marine Reserve on May 18, 2013. The Seventeenth Cause for Discipline is the same as the Twelfth, except that it references Evans instead of Ornelas as assisting passengers using gannons on May 19, 2013. Marrone's and Grinton's observations aboard the *Pacific Star* established these violations as to Evans, just as they did as to Ornelas (and Van Holder). (Factual Findings 14 and 17.)

EIGHTEENTH CAUSE FOR DISCIPLINE

16. The Eighteenth Cause for Discipline alleges Captain Slavkin violated California Code of Regulations, title 14, section 195, subdivision (f)(4), by taking passengers into the Santa Barbara Island State Marine Reserve on May 18, 2013, where passengers and/or crew took and possessed fish. Marrone's and Grinton's observations aboard the *Pacific Star* established this violation. (Factual Findings 12-14.)

SUMMARY

17. Based on the violations of Pacific Star Sportfishing's employees or agents, Pacific Star Sportfishing is subject to disciplinary action under all of the 18 causes for discipline alleged in the Accusation. (§§ 7924, 7857, subd. (b)(2).)

Level of Discipline

18. Neither the Department nor the Commission has promulgated guidelines for determining the proper level of discipline for misconduct by a commercial passenger fishing vessel licensee. In his closing brief, complainant asserts that section 12154, which concerns appeals of suspended or revoked hunting or sportfishing licenses, describes factors which are useful in determining the appropriate discipline in this case. The factors the Commission must consider in such an appeal include the nature, circumstances, gravity, and extent of the violations, the person's culpability for the violations, and the injury to natural resources caused by the violations. (§ 12154, subd. (b)(1).) Based on those factors and a concern about possible recidivism, complainant requests a five-year suspension of Pacific Star Sportfishing's license.

19. The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450.) Consideration of the factors described in section 12154 in this case is reasonable to evaluate public protection, specifically the protection of the public's natural resources. Pacific Star Sportfishing's taking of fish inside a marine reserve, and taking over limits of some species using illegal methods, injured fishing resources and betrayed a duty to ensure passengers were fishing legally. In addition, Captain Bullard and

his subordinates attempted to evade Department oversight by falsifying logbook entries, filleting fish so they could not be identified, and failing to disclose the location of fish on the *Pacific Star* to Department wardens. Captain Bullard's suggestion that Captain Slavkin and other crewmembers were more responsible for the violations than he was (Factual Finding 26) lacked evidentiary support, since he was the person convicted of multiple fishing violations, and was observed watching and assisting passengers catching rockfish using gannons. (Factual Findings 10 and 14.) Furthermore, he remains the *Pacific Star*'s captain, and thus Pacific Star Sportfishing has not "cleaned house" of everyone who was responsible for the violations. (Factual Finding 26.)

20. But a five-year suspension is extraordinarily lengthy, and would be tantamount to revocation, given its probable financial impact. (See Factual Finding 28.) If complainant sought to have the Commission revoke the license, nothing prevented complainant from requesting that relief. Furthermore, the violations at issue occurred in 2013, and there was no evidence presented of more recent violations. "The evidentiary significance of . . . misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. [Citations.]" (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) In addition, Pacific Star Sportfishing has no other disciplinary history, which is another mitigating factor. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 68, 71.) Pacific Star Sportfishing's evidence of changed fishing practices (Factual Findings 26-29) was also unrebutted. These considerations do not eliminate the need for discipline entirely, but militate in favor of lesser discipline than a five-year suspension.

21. Considering the above, a two-year suspension, with execution stayed, and a five-year period of probation with a 90-day actual suspension is appropriate. The nature and severity of the violations, and Captain Bullard's continued involvement with the business, require this substantial level of license discipline to ensure future compliance. In their closing brief, respondents assert that all of the violations "were in the context of the rock cod fishery within the Channel Islands National Park," and suggest that any discipline imposed should be similarly limited to that fishery and area. (Exhibit J, p. 7.) But fishing inside a marine reserve, exceeding boat limits, understating fish counts, and failing to exhibit fish upon a warden's demand reflect a disregard for fishing laws generally, not just one fishery's particular laws. Therefore, the discipline imposed should not be limited to a particular fishery or geographic area.

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ORDER

The commercial passenger fishing vessel license issued to respondents Pacific Star Sportfishing, LLC, the predecessor to respondent Pacific Star Sportfishing, Inc., is suspended for two years. However, execution of that suspension is stayed, and respondents are placed on probation for five years under the following terms and conditions:

1. Actual Suspension

The license is actually suspended for the first 90 days of probation.

2. Obey all Laws

Respondents shall obey all federal, state and local laws, all rules governing the operation of commercial boats in California.

3. Notice to Crewmembers or other Employees

Respondents must provide a copy of this order to every *Pacific Star* crewmember or other employee, and obtain a signed acknowledgment that the crewmember or other employee has received and reviewed the order.

4. Cooperate with the Department of Fish and Wildlife and the Fish and Game Commission

Respondents shall cooperate with all officers, employees, or other representatives of the Department of Fish and Wildlife and the Fish and Game Commission in the monitoring and investigation of respondents' compliance with the terms and conditions of probation.

5. Appearance at Interviews

Christine Bullard, the President of Pacific Star Sportfishing, Inc., shall appear in person upon request for interviews at respondents' place of business, on the *Pacific Star*, or at a regional office of the Department of Fish and Wildlife, throughout the term of probation. Respondents shall produce such records and documents at such interviews as may be requested by the Department of Fish and Wildlife, the Fish and Game Commission, or their designee.

6. Quarterly Reports

During the probation period, respondents must submit quarterly reports to the Department of Fish and Wildlife, signed by an officer of respondents under penalty of perjury, certifying compliance with the terms of probation.

7. Violation of Probation

Respondents' failure to comply with any term or condition of probation constitutes a violation of probation. If respondents violate probation in any respect, the Fish and Game Commission, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the order of suspension that was stayed. If an Accusation or a Petition to Revoke Probation is filed against respondent during probation, the Fish and Game Commission shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

8. Completion of Probation

Following the successful completion of probation, respondents' license will be fully restored.

DATED: September 26, 2017

DocuSigned by:

Thomas Heller

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Law Enforcement Division
1416 Ninth Street, Room 1326
Sacramento, CA 95814
(916) 653-4094
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor

CHARLTON H. BONHAM, Director

CALIFORNIA
FISH AND GAME
COMMISSION

2017 NOV 20 AM 10:06



November 20, 2017

California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Subject: Proposed Decision—*In the Matter of the Accusation against Pacific Star Sportfishing, Inc.*

Dear Commissioners:

This letter relates to the Proposed Decision submitted by the Office of Administrative Hearings to the Fish and Game Commission (“Commission”) *In the Matter of the Accusation against Pacific Star Sportfishing, Inc.* (“Proposed Decision”). On July 18-19, 2017, the Office of Administrative Hearings, on the Commission’s behalf, held a hearing in which the Department of Fish and Wildlife (“Department”) presented evidence showing why the Commission should suspend Pacific Star Sportfishing, Inc.’s (“Pacific Star Sportfishing”) Commercial Passenger Fishing Vessel License (“License”) for five years. While the administrative law judge found that Pacific Star Sportfishing had committed eighteen violations of the Fish and Game Code and regulations adopted pursuant to the Fish and Game Code, he errs in recommending a 2-year stayed suspension, reducing the actual suspension to 90-days, and placing Pacific Star Sportfishing under a five-year probation,¹ an action for which the Commission has no authority. The Department instead respectfully requests that the Commission suspend the License for five years or at a minimum, make the two year stayed suspension an actual suspension, and not attempt to impose probation.²

Violations

On May 17-19, 2013, and June 28-July 1, 2013, Pacific Star Sportfishing took paying passengers fishing off the coast of southern California. The administrative law judge found that during these trips, Pacific Star Sportfishing’s employees committed eighteen violations of the Fish and Game Code and regulations adopted pursuant to the Fish and Game Code. Fish and Game Code, section 7924, states that the Commission may suspend the License for any offense for which a commercial fishing license may be suspended. Fish and Game Code, Section 7857, subdivision (b)(2), states that the Commission may suspend a commercial fishing license for “A violation of this code...or the regulations adopted pursuant thereto, by the licensee...or his or her agent, servant, employee, or person acting under the licensee’s, permittee’s, or entitled person’s direction

¹ Proposed Decision, pp. 13-14.

² California Code of Regulations, title 14 (“Title 14”), section 746, subdivision (a)(11), authorizes the Commission to “adopt, revise or reject the proposed decision.”

or control.” Accordingly, the Commission may suspend the License for any violation of the Fish and Game Code or fishing regulations committed by Pacific Star Sportfishing’s employees. Some of Pacific Star Sportfishing’s employees’ violations include:

- On May 18 and May 19, 2013, taking passengers inside the Santa Barbara Island State Marine Reserve,³ an area closed to all fishing, where employees assisted passengers in taking fish.⁴
- On May 18 and 19, 2013, assisting many, if not most, passengers in taking fish illegally by using illegal fishing methods, specifically by using more than two hooks on a line, in violation of Fish and Game Code sections 2000 and 2002.⁵ Before departing on May 17, a Pacific Star Sportfishing employee told undercover Wildlife Officers, “I don’t know exactly where you guys will be going, maybe around the islands, maybe in some areas you’re not supposed to, but whatever happens on the boat, stays on the boat,” and informed the wardens that they might want to purchase additional hooks to rig illegal fishing lines with more than two hooks.⁶
- Taking rockfish in a restricted area, specifically, unlawfully taking nearshore rockfish in water deeper than 20 fathoms while inside the Cowcod Conservation Area Reserve on May 18 and 19, 2013.⁷
- On May 18 and 19, 2013, failing to report: five gill sharks; fish caught and consumed during the trip; several rockfish caught inside the Santa Barbara Island State Marine Reserve; small rockfish taken and used for bait; fish thrown back into the ocean; and fish taken elsewhere on the trip by the employees and passengers.⁸
- Unlawfully possessing and failing to disclose multiple over limits of various species of rockfish after returning from the June 29 and July 1, 2013 trip, in violation of Fish and

³ Proposed Decision, p. 8; Accusation, First Cause for Discipline. On June 13, 2014, Captain Bullard pled no contest to violating Title 14, section 632, subdivision (a)(1)(A) in the Superior Court of California, County of Santa Barbara. Fish and Game Code, section 12158.5 states, “For the purpose of this suspension hearing, a plea of nolo contendere or no contest” to a violation of any provision of the Fish and Game Code, or any regulation adopted under this code, is a conviction of a violation thereof.”

⁴ Proposed Decision, pp. 10-11; Accusation, Ninth, Eleventh, Fourteenth, Sixteenth, and Eighteenth Causes for Discipline; Title 14 Section 195, subdivision (f)(4).

⁵ Proposed Decision, pp. 10-11; Accusation, Tenth, Twelfth, Thirteenth, Fifteenth, and Seventeenth Causes for Discipline; Title 14, section 28.65, which states, in part, “Except as provided in this article, fin fish may be taken only on hook and line or by hand. Any number of hooks and lines may be used in all ocean waters and bays except... (c) When rockfish (genus *Sebastes*), lingcod (*Ophiodon elongatus*), cabezon (*Scorpaenichthys marmoratus*), or kelp or rock greenlings (*Hexagrammos decagrammus* and *Hexagrammos lagocephalus*) are aboard or in possession, where only one line with not more than two hooks may be used pursuant to sections 28.55, 28.27, 28.28 or 28.29, respectively.”

⁶ Proposed Decision, p. 3.

⁷ Proposed Decision, p. 8; Accusation, Second Cause for Discipline. June 13, 2014, Captain Bullard pled no contest in the Superior Court of California, County of Santa Barbara, to violating C.C.R., title 14, section 27.50, subdivision (b).

⁸ Proposed Decision, p. 8; Accusation, Third Cause for Discipline. On June 13, 2014, Captain Bullard pled no contest in the Superior Court of California, County of Santa Barbara, to violating Section 195, subdivision (c), by failing to accurately identify and report on the skipper’s logbook the full and correct record of fish taken.

Game Code, section 7923. Wildlife Officers found over limits of 88 bocaccio rockfish, 31 California scorpionfish, and 37 unspecified rockfish.⁹

- On July 1, 2013, unlawfully possessing fillets of white sea bass and halibut without the skin attached and cut into pieces, thus making the size and weight limit of the fish indeterminable, in violation of Fish and Game Code, section 5508.¹⁰
- On July 1, 2013, unlawfully possessing 63 fish fillets without the skin attached, thus making the species of the fish indeterminable, in violation of Fish and Game Code, section 5509.¹¹
- Possessing, but failing to exhibit upon a formal demand made by a Wildlife Officer, all fish on the vessel, in violation of Fish and Game Code, section 2012.¹² Wildlife Officers subsequently found 28 bocaccio fillets and various halibut pieces during a vessel inspection. The Proposed Decision notes that "As to at least the bocaccio fillets, this appears to have been a deliberate omission, because Captain Robert Bullard told a warden he thought it would be better if the warden found those fillets himself."¹³

Department's Recommendation

The Department recommends adopting the Proposed Decision's entire Factual Findings section and Paragraphs 1-19 of the Legal Conclusions, finding Pacific Star Sportfishing committed all eighteen violations listed in the Department's Accusation. The Department recommends rejecting Paragraphs 20-21 of the Legal Conclusions and the entire Order because they are not consistent with past practices of the Commission and they are based on a misunderstanding of the Commission's authority to suspend or revoke the License.

The Order recommends that the Commission suspend the License for 2 years, but stay the execution of the suspension except for a 90-day actual suspension, and place Pacific Star Sportfishing on probation for five years. Under the proposed probation, Pacific Star Sportfishing would be required to comply with all laws governing the operation of commercial boats in California; provide a copy of the order to all employees; fully cooperate with Department employees; and submit quarterly reports. Christine Bullard, President of Pacific Star Sportfishing, would be required to appear at periodic interviews.. A violation of these conditions, after yet another hearing, would result in the suspension of the License for two years.¹⁴

However, the Order would not protect fishery resources. The 90-day suspension would occur from December to early March when vessels are often inactive. Furthermore, since Pacific Star

⁹ Proposed Decision, p. 9; Accusation, Fourth Cause for Discipline. On June 20, 2014, in the Superior Court of California, County of Los Angeles, Captain Bullard pled *nolo contendere* to violating Section 7923 by keeping false records of fish taken.

¹⁰ Proposed Decision, p. 9; Accusation, Fifth Cause for Discipline. On June 20, 2014, in the Superior Court of California, County of Los Angeles, Captain Bullard pled *nolo contendere* to violating Section 5508.

¹¹ Proposed Decision, p. 9; Accusation, Sixth Cause for Discipline. On June 20, 2014, in the Superior Court of California, County of Los Angeles, Captain Bullard pled *nolo contendere* to this violation.

¹² Proposed Decision, p. 9; Accusation, Seventh Cause for Discipline.

¹³ *Ibid.*

¹⁴ Proposed Decision, pp. 13-14.

Sportfishing's employees committed 18 serious violations, the 90-day period is an insufficient amount of time to keep Pacific Star Sportfishing off the water and prevent further violations, or allow Captain Bullard and Christine Bullard, the President of Pacific Star Sportfishing, an opportunity to become rehabilitated. Even though the Proposed Decision notes the passage of time and lack of violations since the last violation, Mrs. Bullard still troublingly refuses to accept responsibility for violations committed by her employees, and despite claiming Pacific Star Sportfishing has "cleaned house," Pacific Star Sportfishing still employs Robert Bullard as the Captain to lead fishing trips.¹⁵ Her failure to accept responsibility for violations committed by employees of Pacific Star Sportfishing, the continued employment of Mr. Bullard as the Captain of the *Pacific Star*, and the financial incentive to fish in closed areas, ignore gear restrictions, and disregard vessel limits to be able to boast of large catches, makes it very likely that Pacific Star Sportfishing or its employees will violate again. In addition, many of Pacific Star Sportfishing's violations occurred dozens of miles from shore, making it difficult for the Department to monitor Pacific Star Sportfishing's continued compliance with fishing rules.

Furthermore, while the Proposed Decision cites the probable financial impacts of a five-year suspension,¹⁶ presumably any commercial passenger fishing vessel, or any other business, would also face financial impacts from a multi-year suspension. However, the Department is not aware of any other Proposed Decision adopted by the Commission that ever considered financial impacts when suspending or revoking a permit or license. If it is considered, any financial hardship experienced by Pacific Star Sportfishing should be weighed against the competitive advantage it gained by breaking fishing laws so its passengers could catch more fish, and the resulting harm to its law-abiding competitors.

Moreover, there is no authority for the Commission to impose probationary conditions or suspend its own license suspensions. Fish and Game Code, section 7924 only authorizes the Commission to forfeit, suspend or revoke the License—not impose any probationary conditions. Such conditions are also unnecessarily complicated and would not enhance Wildlife Officers' existing authority to enforce fishing laws. Thus, the Department recommends not ordering any probation and instead, suspend the License for five years.

Conclusion

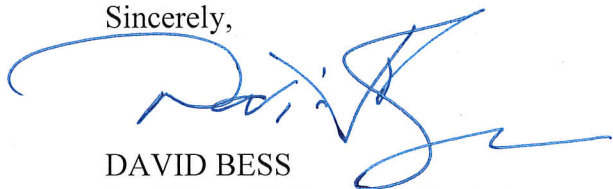
A commercial passenger fishing vessel licensee is responsible for teaching passengers—who are often novices—how to catch fish lawfully and successfully, and setting a good example for passengers to follow. In contrast, Pacific Star Sportfishing's employees disregarded fishing laws and informed passengers that "whatever happens on the boat, stays on the boat." Employees then assisted passengers in fishing in closed areas, ignored bag limits, and helped passengers use illegal methods to abuse fishery resources. As long as Pacific Star Sportfishing is licensed, these violations may continue. Thus, the only way to protect fishery resources is to suspend the license for a significant duration. At the very least, I urge the Commission to reject the 90-day

¹⁵ Proposed Decision, p. 12.

¹⁶ Proposed Decision, pp. 7 & 12.

actual suspension, not stay the two-year suspension, and instead impose a two-year actual suspension.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Bess', with a stylized flourish extending to the right.

DAVID BESS
Chief, Law Enforcement Division

Cc: Gary Bright
Bright & Powell

GARY M. BRIGHT
C. LAWRENCE POWELL
MICHAEL B. DAMEN
KEVIN M. MAUSETH

BRIGHT & POWELL
ATTORNEYS AT LAW
4299 CARPINTERIA AVENUE
SUITE 200
CARPINTERIA, CALIFORNIA 93013

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

TELEPHONE
(805) 684-8480

2017 DEC -8 AM 8:31
FACSIMILE
(805) 684-3975

EMAIL
brightpowell@gmail.com

November 30, 2017

California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Proposed Decision:
In the Matter of the Accusation against Pacific Star Sportfishing, Inc.

Dear Commissioners:

Please accept this correspondence in response to Mr. David Bess' letter of November 20, 2017 on behalf of the Department of Fish and Wildlife (the "Department") concerning the above-referenced matter.

Succinctly stated, the Department requests the Commission to affirm the Proposed Decision in all material respects, but substitute a two-year suspension of Pacific Star's commercial sportfishing license in lieu of the 90-day suspension recommended by Administrative Law Judge Thomas Heller.

The Department's stated reasons for this action are that "the 90-day period is an insufficient amount of time to ... prevent further violations, or allow Captain Bullard and Christine Bullard, the President of Pacific Star Sportfishing, Inc., an opportunity to become rehabilitated". (D. Bess corresp. 11/20/2017 at p. 4)

These grounds are directly contradicted by the evidentiary record before the Administrative Law Judge and the Department's own actions herein.

1. Relevant Background.

Pacific Star Sportfishing, Inc., is a small, family-run business owned by Christine Bullard.¹ Christine's husband, Robert Bullard, has been employed in California as a commercial sportfishing captain for essentially his entire working life, or a period in excess of 40 years.

¹ The sole asset of the business is the commercial sportfishing vessel known as the Pacific Star, which was purchased in 2000 through money from Christine's parents for the down payment and an institutional loan. This represented Christine's inheritance from her parents.

An administrative hearing was held in this matter in 2015. At the conclusion of a full evidentiary hearing, and while the Judge's recommended decision was pending, the accusation was withdrawn by the Department. This was based on the fact that the accusation had been brought as to Mr. Bullard personally, and not the license holder, Pacific Star Sportfishing.

Thereafter, the Department waited approximately two years to re-file the accusation as to Pacific Star Sportfishing. A two-day evidentiary hearing was conducted before Administrative Law Judge Thomas Heller in July of 2017. The recommended decision was issued on September 26, 2017.

2. A Lengthy Career Without Violations.

Robert Bullard testified at the evidentiary hearing, which testimony was confirmed in relevant part by several other witnesses with extensive law enforcement backgrounds, that he has been employed in the commercial sportfishing industry in California his entire adult life, or approximately 40 years. Mr. Bullard further testified, again without contradiction, that during this time period, commencing in the 1970's, up to the citations herein in the spring of 2013, he had never been cited for a Fish & Game violation, much less faced any disciplinary action as to any of his prior vessel licenses, inclusive of the Pacific Star. This, despite being boarded, on average, once or twice per year by Fish & Game officers.

By any criteria, this is an exceptional record of compliance with the applicable laws and regulations of the industry, and should be afforded significant weight in the final decision herein.

3. The Financial Loss Associated With Any Complete Prohibition of the Ability to Conduct the Business.

As apparent from Respondents' personal tax returns submitted in evidence at the hearing, the vessel is essentially the parties' sole source of income, and from which the family's living expenses, including, but not limited to, the daughter's college tuition and house payments, are made.

Christine Bullard testified that aside from their personal residence, the vessel, Pacific Star, not only represents the family's life savings, but the entirety of her inheritance from her parents.

The vessel was constructed solely for commercial sportfishing and is not designed for any other fishery.

Thus, it is imminently foreseeable that any long-term suspension of the permit at issue will result in the loss of the vessel and a significant portion, if not the entirety, of the family's personal assets.

Neither the sentencing judge at the disposition of the criminal case in Santa Barbara nor the assigned Administrative Law Judge found that the violations, when compared to the lengthy record of compliance with all applicable laws and regulations, merited a complete loss of the Bullards' business investment and livelihood.

4. The Threat of Recidivism.

The Department suggests that the lengthy suspension is appropriate due to a likelihood that further offenses will be committed. This suggestion not only lacks factual support on the record, it is wholly contradicted thereby.

The underlying offenses occurred in the spring of 2013, or approximately five years ago. Since 2013, up to the present, the vessel, Pacific Star, has been operated on a full-time basis, and boarded on average once or twice per year by Fish & Game officers, without further citation.

Conclusion

California law recognizes that certain licenses, although discretionary, have significant financial consequences on the livelihood of the licensees. Accordingly, due process of law requires a hearing prior to adverse agency action in respect thereto.

As to licenses issued by the Department and subject to review by the Commission, such hearings are conducted on a formal basis by the Office of Administrative Hearings.

Such was the procedure in this case, in which a two-day evidentiary hearing was followed by extensive post-hearing briefings, resulting in a detailed and well-reasoned decision by an experienced Administrative Law Judge. Obviously, given the significant investment of time and resources by all concerned, this process should be respected, unless there is a compelling reason not to do so.

The Department concedes that the recommended decision be adopted in full, except that the key component thereof, the length of the license suspension, be discarded in favor of the Department's own recommendation.

The Department's reasons for such action, the threat of future violations and/or the need for rehabilitation, are both directly refuted by the evidentiary record, as found by the assigned Judge.

The Bullards have literally decades of conducting a commercial sportfishing business in California without a single citation, and nearly five years of a lawful operation since the 2013

violations.² If the Department honestly believes that there was a substantial threat of future violations, why was there a full two-year delay by the Department from the withdrawal of the first accusation before bringing the second?

Similarly, the suggestion that there is some need for rehabilitation is equally pretextual. Rehabilitation as envisioned by the Department's recommendation herein would consist of the total loss of the Bullards' livelihood, as they do not have the financial wherewithal to make all the required payments on their vessel loan, insurance premiums, mooring fees, Coast Guard inspections, etc., without any income for a two-year period. The recommended decision, which provides for periodic reviews of the Pacific Star's ongoing business operations, comes as close to a rehabilitation review as has ever been proposed in this matter, including by the Department.

The lengthy periods of compliance with all laws, both before and after the violations at issue, as well as the devastating financial losses associated with the complete loss of their sole means of support, merit that the Bullards be afforded an opportunity to demonstrate that the violations do not reflect their manner of doing business.

The recommended decision by Judge Heller is fair to both sides and should be adopted by the Commission.

Very truly yours,

BRIGHT & POWELL



Gary M. Bright

cc: Department of Fish and Wildlife
Attention: David Bess
1416 Ninth Street, Room 1326
Sacramento, CA 95814

Michael Yaun, Esq. (via e-mail: Michael.Yaun@fgc.ca.gov)
Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

² While the Pacific Star has been operated by the Bullards since 2000, the family, or Robert individually, owned commercial sportfishing vessels in California going back to the 1970's.

From: Cory Pukini <cory@wildcoast.net>
Sent: Wednesday, December 13, 2017 4:38 PM
To: FGC
Cc: Zachary Plopper
Subject: Thank you for enforcing California's MPAs
Attachments: Thank you to FGC (Pacific Star) - 2017-12-12 EM.pdf

To whom it may concern,

Please forward the attached letter to Fish and Game Commissioners.

Thank you for your time,

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		<p>Cory Pukini Conservation Coordinator WILDCOAST 619.423.8665 x 209 cory@wildcoast.net www.wildcoast.net 925 Seacoast Dr. Imperial Beach, CA 91932, USA Support your coast and ocean. Donate today!</p>
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December 13, 2017

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

Via email: fgc@fgc.ca.gov

Dear Commissioners Sklar, Hostler-Carmesin, Williams, Burns and Silva,

On behalf of our organizations, we would like to thank you and your staff for your help in supporting effective enforcement in California's MPA network. The Commission's recent announcement that it would reject the proposed decision in the case of *Pacific Star Sportfishing*, which was discussed at the December 6 Fish and Game Commission Executive Session, demonstrated strong Commission leadership and sends a clear message that poaching in California's MPAs will not be tolerated or taken lightly. We appreciate the Commission's decision to examine the matter at the first available Commission meeting and commend you for taking this egregious MPA violation seriously.

Illegal take of marine resources in MPAs undermines the tireless work of agencies, the public, ocean users and our organizations to manage MPAs effectively as tools to protect sensitive marine life, restore ecosystem health, help fisheries rebound, and enhance the recreational value of coastal areas. Unfortunately, poaching, particularly at a commercial scale, continues in California's MPAs and has significant adverse impacts on recovering ecosystems and wildlife populations. These selfish acts of poaching have far-reaching ecological and economic impacts that imperil our state's resources and jeopardize a sustainable future for our ocean.

The strict enforcement of MPAs is absolutely critical for their success--both to protect the biological resources protected by MPAs and to deter future MPA violations that will undermine the integrity of California's MPA network. Moreover, because California's MPA system was designed to function as a network, degradation of a single MPA can have consequences that reach beyond the poaching site. The recent actions by CDFW and the California Fish and Game Commission to help prevent poaching in California's MPAs are a model that we hope the state will continue to follow. We hope that this case results in the strictest possible consequences and inspires successful MPA enforcement throughout California and the United States.

On behalf of our organizations, we thank you for your hard work to protect the natural resources found within California's incredible network of MPAs.

Sincerely,

Zach Plopper
Conservation Director
WILDCOAST

Elizabeth Murdock
Director
Pacific Ocean Initiative

Jocelyn Enevoldsen
Coastal Resources Coordinator
Heal the Bay

Gale Filter
Retired Environmental Prosecutor