

STAFF SUMMARY FOR FEBRUARY 6, 2019

- II. *Richard Zellers appeal*: DFW suspended Mr. Zellers' trapping license for failure to submit an annual report as required by regulation (Exhibit D4). Mr. Zellers appealed to FGC requesting that his license be reinstated (Exhibit D5). In response to the appeal, DFW submitted a statement to FGC not opposing the reinstatement (Exhibit D6).
- III. *Larry Moore appeal*: DFW denied Mr. Moore's request for reinstatement of a deeper nearshore species fishery permit (DNSFP) (Exhibit D7). Mr. Moore appealed the denial (Exhibit D8). In response to the appeal, DFW submitted a statement that DFW does not object to the untimely renewal of Mr. Moore's DNSFP (Exhibit D9).
- IV. *Salvatore Sardina appeal*: DFW denied a request by Mr. Sardina for reinstatement of a salmon vessel permit (SVP) (Exhibit D10). Mr. Sardina appealed the denial (Exhibit D11). In response to the appeal, DFW submitted a statement that DFW does not object to the untimely renewal of Mr. Sardina's SVP (Exhibit D12).
- V. *Accusation against Adam Aliotti*: DFW filed an accusation against Adam Aliotti and Mr. Aliotti filed a notice of defense. FGC staff referred the matter to the Office of Administrative Hearings (OAH) and, on Jan 17, 2019, OAH submitted a proposed decision to FGC (Exhibit D13).
- VI. *Accusation against Alecia Dawn, Inc.*: DFW filed an accusation against Alecia Dawn, Inc. and Alecia Dawn, Inc. filed a notice of defense. FGC staff referred the matter to the OAH and, on Jan 17, 2019, OAH submitted a proposed decision to FGC (Exhibit D14).

Recommendation

- (D) **FGC staff**: Grant the appeals filed by Mr. Rosca and Mr. Zellers. Grant the appeals filed by Mr. Moore and Mr. Sardina, acknowledging that in both appeals, the appeal does not impact fees owed under the statutory structure. Adopt the proposed decisions regarding both the Accusation against Adam Aliotti and the Accusation against Alecia Dawn, Inc.

Exhibits

- A1. [CA Cattlemen's Association vs CA FGC Order, dated Jan 28, 2019](#)
- D1. [Letter from DFW to John Rosco \[sic\], regarding suspension of his trapping license, dated Jul 19, 2018](#)
- D2. [Letter from John Rosca, appealing the DFW suspension, received Sep 4, 2018](#)
- D3. [Letter from DFW to FGC, regarding DFW's response to Mr. Rosca's appeal, dated Jan 9, 2019](#)
- D4. [Letter from DFW to Richard Zellers, regarding suspension of his trapping license, dated Aug 31, 2015](#)
- D5. [Email from Richard Zellers to FGC, appealing the DFW suspension, received Aug 1, 2016](#)

STAFF SUMMARY FOR FEBRUARY 6, 2019

- D6. [Letter from DFW to FGC, regarding DFW's response to Mr. Zellers' appeal, dated Jan 9, 2019](#)
- D7. [Letter from DFW to Larry Moore, denying a request for reinstatement of a DNSFP, dated May 25, 2018](#)
- D8. [Letter from Larry Moore to Joshua Morgan, requesting an appeal before FGC, dated Jun 18, 2018](#)
- D9. [Letter from DFW to FGC, stating DFW does not object to renewal of Mr. Moore's DNSFP, dated Jan 15, 2019](#)
- D10. [Letter from DFW to Salvatore Sardina, denying reinstatement of an SVP, dated Jun 28, 2017](#)
- D11. [Email from Mr. Sardina to Ruth Flores, appealing the SVP reinstatement denial, dated Aug 9, 2017](#)
- D12. [Letter from DFW to FGC, stating DFW does not object to the reinstatement of Mr. Sardina's SVP, dated Jan 14, 2019](#)
- D13. [Proposed Decision In the Matter of the Accusation Against Adam Robert Salvatore Aliotti \(OAH No. 2017091047\)](#)
- D14. [Proposed Decision In the Matter of the Accusation Against Alecia Dawn, Inc. \(OAH No. 2018030708\)](#)

Motion/Direction

(D) Moved by _____ and seconded by _____ that the Commission grants the appeals of Mr. Rosca and Mr. Zellers, reinstating the trapping licenses of Mr. Rosca and Mr. Zellers.

AND

Moved by _____ and seconded by _____ that the Commission grants Mr. Moore's appeal reinstating his Deeper Nearshore Species Fishery Permit upon payment of the fees listed in the Department-provided fee statement.

AND

Moved by _____ and seconded by _____ that the Commission grants Mr. Sardina's appeal renewing Mr. Sardina's Salmon Vessel Permit upon payment of the fees listed in the Department-provided fee statement.

AND

Moved by _____ and seconded by _____ that the Commission adopts the proposed decisions In the Matter of the Accusation Against Adam Robert Salvatore Aliotti and In the Matter of the Accusation Against Alecia Dawn, Inc.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/28/2019

TIME: 02:12:00 PM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Patricia Ashworth

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2017-00003866-CU-MC-CTL** CASE INIT.DATE: 01/31/2017

CASE TITLE: **California Cattlemens Association vs California Fish and Game Commission**

[IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 01/18/2019 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

FINAL RULING

Petitioners/plaintiffs California Cattlemen's Association and California Farm Bureau Federation's motion for judgment on the preemptory writs and request for declaratory relief is denied. The determination by defendant/respondent Fish & Game Commission ("Commission") finding the gray wolf a native species of California was not an abuse of discretion. Additionally, even if the case specific use of the "range" as "California" might be considered an underground regulation under the Administrative Procedure Act ("APA"), the interpretation has been supported by the case law since 2007. The listing decision based upon the presence of a wolf, which later became part of a breeding pair, by the Commission was not arbitrary or capricious. Petitioners' evidence does not support the Commission acted in excess of its jurisdiction by listing the gray wolf based upon an intermittent presence of one wolf.

The court has reviewed the administrative record ("AR") as well and the pleadings by the parties. The court has considered intervenor Biological Diversity, Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, and Cascadia Wildlands' opposition, as well as amicus curiae briefs by California Rifle and Pistol Association, Incorporated and California Wool Growers Association, and the Rocky Mountain Elk Foundation Inc. Although on occasion these referenced items outside the administrative record, their viewpoints were read to improve the court's understanding of the impact of these issues.

Petitioners' writ is denied to the first cause of action. The California Endangered Species Act ("CESA") defines an "endangered species" as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes." (Fish & G. Code § 2062, emphasis added.) Section 2062 authorizes the Commission to list at the level of a taxonomic species, and respondents have not cited

any law which requires it to list at the taxonomic subspecies level.

The Commission reasonably decided to list the gray wolf at the taxonomic species level in light of ongoing scientific debate regarding the appropriate classifications of the various gray wolf subspecies and their historic presence in California. The administrative record identified the gray wolf (*Canis lupus*) as a keystone species that once inhabited most of the United States, including much of California. (AR0011801.) "There are numerous historical records of wolves in California, dating back to the 1700s," leading the Department of Fish and Wildlife to conclude that "wolves were distributed widely in California, particularly in the Klamath-Cascade Mountains, North Coast Range, Modoc Plateau, Sierra Nevada, Sacramento Valley, and San Francisco Bay Area." (AR0012655-56; 0012695.) Almost a hundred years ago, all gray wolves had been extirpated from California (AR 10076.) There is no dispute that the individual wolf initially sighted in California (referred to as "OR-7") is a member of the taxonomic gray wolf species. Petitioners argue OR-7, was a subspecies of a gray wolf not native to California, which allegedly were either Great Plains or Mexican gray wolves, and not great northwestern wolf. Therefore, petitioners contend because a northwestern wolf is not native to California, no protection should be given. However, the commission is not limited to protecting only a subspecies, but may protect a native species.

The Commission's determination was based on scientific evidence and is entitled to deference. There was evidence in the record that the subspecies to which OR-7 belongs (*canis lupis occidentalis*) also has some genetic markers of a subspecies (*canis lupis nubilus*) that historically occupied California. The evidence supports the rather fluid classification of various subspecies of the gray wolf. (AR10337, 10104-10105; 10178, 10835-10836, 11888-11889, 12717-12718, 12848-12851.) The Commission considered OR-7 shared some genetic markers of a subspecies that formerly inhabited California, the Great Plains wolf. (AR 10105, 10835, 11888-11889.) Thus, there was substantial evidence for the Commission to reasonably conclude that OR-7 is a member of a subspecies that historically was native to California. The court must err on the side of protecting the species in interpreting CESA because the Legislature has expressly set forth its policy of conserving, protecting, and restoring any endangered species and its habitat. (§ 2052.) (*Central Coast Forest Assn. v. Fish & Game Com.* (2018) 18 Cal.App.5th 1191, 1227, *review denied* (Mar. 28, 2018).)

The Commission also could reasonably conclude based upon the evidence before it the gray wolf is in danger of becoming extinct in California. The Commission found the factors cited in CESA threaten the continued existence of gray wolf in the State of California, based upon a combination of the following factors: 1. overexploitation; 2. predation; 3. disease; or 4. other natural occurrences or human-related activities. (AR 10076, 12908.) Although petitioners object to the hearsay evidence of threats to kill wolves, the administrative record also shows the Commission considered other factors which threaten the gray wolves' existence, including accidental deaths by shooters believing they were shooting a coyote, traffic accidents, restricted habitat, susceptibility to several diseases, resulting in an extremely high rates of wolf pup mortality. (AR 10078-79; 12912-13.)

Petitioners compare the findings of the Department which did not recommend listing the gray wolf, with those of the Commission. The Department determined that the petitioned action was not warranted. (AR 5765.) "Department believes, based on best available scientific information, that a distribution and range occurs at a breeding population or species level . . . and should be based on successful reproduction and recruitment of the species, rather than the home range or dispersal travels of individual animals." (AR12091- 92.) However, the status of the Commission and Department, though related, does not defeat that the Commission has the sole ability to list an endangered species.

Furthermore, at the time the Department reached its recommendation in November 2014, the evidence was incomplete. At the time of the recommendation, OR-7 was the sole wolf in California: "The gray wolf is once again present in California, on at least an intermittent basis, and foreseeably *will continue to be present* in California, as discussed below. OR-7's range now includes California and Oregon. OR7 has established a range that includes portions of Northern California, as this wolf is known to have crossed back and forth across the Oregon-California border since 2011 and to have been present in California in each of those years. Status Review at 4." (AR 10076, emphasis added.)

The Commission received evidence after November 4, 2014, that OR-7 was traveling with a female mate and at least two gray wolf pups on the California-Oregon border, and that it was highly likely they had been traveling together within California. (AR01014; 10077; 10258; 10270; 10519; 10949; 10952; 11987; 12009; 12015; 12019; 12039; 12197; 12464.) Even the Department noted in its status review overview, "With the recent gray wolf expansion in the western United States, a lone radio-collared gray wolf known as OR7 dispersed from northeastern Oregon's wolf population to California in December 2011 and has been near the Oregon/California border since that time, crossing back-and-forth. The Department *believes it is likely that other dispersing wolves (marked or unmarked) from Oregon will travel to California*, and possible that gray wolves will eventually attempt to establish a breeding population in California in the foreseeable future. (AR 5739, emphasis added.) Wolf OR7, entered California from a northeastern Oregon wolf pack. The Oregon wolf population was established from wolves emigrating from Idaho. The Idaho wolves originated from translocated wolves (*Canis lupus occidentalis*) captured in the Rocky Mountains of British Columbia and Alberta (Montana Fish, Wildlife, and Parks 2013). Wolves in Central Washington packs have been found to carry an admixture of both *C. l. occidentalis* and *C. l. nubilis* genes (Martorello 2013). (AR 5741.)"

Thus, the Commission's decision could reasonably rely on Department's projections in order to determine protection was needed to be established to prevent extinction in California.

The court declines to take judicial notice as requested by petitioners. Notwithstanding petitioners list various findings with regard to other animals, there is no comparison evidence as to whether every listing by the Commission restricted "range" to California. At oral argument, petitioner's counsel asserted these were every case. Petitioners have not shown any evidence to support any written document or internal memorandum evidencing a policy adopted by the head of the Commission as to "range." Nonetheless, the court cannot ignore *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 575, where the court noted that "Government Code section 11340.5 makes clear that the rulemaking procedures of the APA apply to any "regulation," and the definition of regulation includes "every rule ... adopted ... to ... *interpret* ... the law ..." (i.e., interpretive regulations." The court in *Tidewater* did not stop its analysis even after finding the regulation void because there was a violation of the APA. It merely gave no weight to the agency's interpretation. (*Id* at 576.)

Unlike *Tidewater*, there was no written regulation, but petitioners' arguments have merit that the Commission limited its application of "range" to California. More importantly, the cases for which petitioners seek to take judicial notice occurred after *California Forestry Assn. v. California Fish & Game Commission* (2007) 156 Cal.App.4th 1535, 1540, where the Third District Court of Appeal made a judicial determination that the term "range" in the CESA refers to a species' California range only, thereby entitling a species to protection if it is threatened with extinction throughout all, or a significant portion, of its California range (as opposed to its worldwide range). The court recognized "California has been at the forefront of enacting legislation to protect endangered and rare animals-first doing so in 1970. In enacting the CESA, the Legislature made clear this state's policy to protect any endangered or

threatened "species or subspecies" if at risk of extinction "throughout all, or a significant portion, of its range" (§§ 2052, 2062, 2067). (*Id.* at 1540.) Petitioners argue that case is distinguishable because the court gave deference to the Commission and the Department's interpretation of "range".

Even without deference to the agency, the reasoning in *California Forestry* is persuasive given the remedial nature of CESA, and the importance to construe its provisions liberally. (*Id.* at 1545.) While the *California Forestry* court gives deference to the agency's interpretation, the court also "agreed with the Commission's and the Department's interpretation of the range provision as it was congruent with the CESA's purpose" for its interpretation based upon the goal of protecting species within the state. (*Id.* at 1549, emphasis added.) This court shall follow the holding in *California Forestry* to refer to a species' California range. (*Id.* at 1551.)

Based upon the administrative record, the court finds substantial evidence to support the Commission's findings. The Commission did not abuse its discretion nor did it act capriciously. Petitioners' motion is denied as to all causes of action.

Eddie C. Sturgeon

Judge Eddie C Sturgeon



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd
Sacramento, CA 95834
www.wildlife.ca.gov
(916) 928-8322
Fax (916) 419-7587

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



Certified Mail

July 19, 2018

Mr. John Rosco
8863 Greenback Lane Ste. 206
Orangevale, CA. 95662

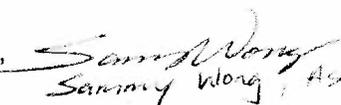
SUBJECT: NOTICE OF SUSPENSION OF TRAPPING LICENSE

Pursuant to Section 467, Title 14, of the California Code of Regulations (Section 467), recreational trappers are required to report their annual take of furs for the preceding trapping season to the Department by July 1, even if the take was zero furs, or their Trapping License will be suspended.

Department of Fish and Wildlife (Department) license records show you did not submit a trapping report by July 1, 2018, for the 2017-2018 trapping year. Therefore, pursuant to Section 467, the Department is hereby suspending your Trapping License.

If you wish to request an appeal before the California Fish and Game Commission (Commission) to reinstate your license, you may submit your request to the Commission by mail at P.O. Box 944209, Sacramento, California 94244-2090, fax at (916) 653-5040, or email at fgc@fgc.ca.gov.

If you believe this notice was sent in error, please contact Ms. Sally Howard of my staff, at the letterhead address or by telephone at (916) 928-5852 or email Sally.Howard@wildlife.ca.gov.

Sincerely, 
Sammy Wong, Assistant Branch Chief
on behalf of,
Joshua Morgan, Chief
License and Revenue Branch

cc: Mr. Mike Yaun
Fish and Game Commission
Sacramento, California

Mr. William Caputo
Department of Fish and Wildlife
Sacramento, California

Ms. Sally Howard
Department of Fish and Wildlife
Sacramento, California

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

2018 SEP -4 PM 1:00

John Rosca
Broadside Boars Hunting Adventures
8863 Greenback Ln #206
Orangevale Ca 95622

To: California Fish and Game Commission

I am writing to request an appeal to reinstate my license #64903. I did not receive the notices as there was confusion with my address, and I was out of the country during the reporting process. Please advise me on the next step to reinstate.

Thank you,
John Rosca

916-813-1200



Effective November 20, 2015, regulations to ban recreational and commercial bobcat trapping statewide have been adopted.

NAME John Fosca PERMANENT TRAP NO. 64903
 ADDRESS 8863 Greenback Lane Suite 206 CITY Oroville STATE CA ZIP CODE 95662
 GO ID# _____ EMAIL _____ DAY TELEPHONE 916-813-1200

SPECIES	TOTAL # SOLD	COUNTY	# KILLED	# TRAPS SET	# DAYS TRAPPED	COUNTY	# KILLED	# TRAPS SET	# DAYS TRAPPED	COUNTY	# KILLED	# TRAPS SET	# DAYS TRAPPED	COUNTY	# KILLED	# TRAPS SET	# DAYS TRAPPED	
BADGER	0		0															
BEAVER	0		0															
COYOTE	0		0															
GRAY FOX	0		0															
LONG-TAILED WEASEL	0		0															
MINK	0		0															
MUSKRAT	0		0															
OPOSSUM	0		0															
RACCOON	0		0															
SHORT-TAILED WEASEL	0		0															
SPOTTED SKUNK	0		0															
STRIPED SKUNK	0		0															
OTHER	0		0															

LIST ALL BUYERS TO WHOM ANIMALS WERE SOLD. (Attach additional sheet if needed.)

BUYER'S NAME	ADDRESS	CITY	STATE	ZIP CODE	FUR DEALER	FUR DEALER LICENSE #
					<input type="checkbox"/> YES <input type="checkbox"/> NO	
					<input type="checkbox"/> YES <input type="checkbox"/> NO	
					<input type="checkbox"/> YES <input type="checkbox"/> NO	

- By law you must complete a 2017-2018 Trapping Report or submit a sworn statement of your annual take of fur by July 1, 2018 or your trapping privileges will be suspended (Section 467, Title 14, of the California Code of Regulations). A Trapping Report is required if no animals were taken, enter "0" for number killed. The Trapping Report is not required for animals taken by licensees who provide trapping services for profit.
- Sign and date the report. Incomplete reports will be returned.
- Trapping reports can be submitted through the Departments online license sales and service at www.ca.wildlifelicense.com/InternetSales/, or mail this Trapping Report to the Department of Fish and Wildlife, License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834 or Fax to (916) 419-7586.
- Contact the License and Revenue Branch at (916) 928-5852 or sdu@wildlife.ca.gov if you have any questions about completing this form.

I hereby certify that all information contained in this report is correct and true.

Signature X _____ Date 08-27-2018



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd
Sacramento, CA 95834
www.wildlife.ca.gov
(916) 928-8322
Fax (916) 419-7587

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



Certified Mail

July 19, 2018

Mr. John Resco — *Rosca*
8863 Greenback Lane Ste. 208
Orangevale, CA. 95662

SUBJECT: NOTICE OF SUSPENSION OF TRAPPING LICENSE

Pursuant to Section 467, Title 14, of the California Code of Regulations (Section 467), recreational trappers are required to report their annual take of furs for the preceding trapping season to the Department by July 1, even if the take was zero furs, or their Trapping License will be suspended.

Department of Fish and Wildlife (Department) license records show you did not submit a trapping report by July 1, 2018, for the 2017-2018 trapping year. Therefore, pursuant to Section 467, the Department is hereby suspending your Trapping License.

If you wish to request an appeal before the California Fish and Game Commission (Commission) to reinstate your license, you may submit your request to the Commission by mail at P.O. Box 944209, Sacramento, California 94244-2090, fax at (916) 653-5040, or email at fgc@fgc.ca.gov.

If you believe this notice was sent in error, please contact Ms. Sally Howard of my staff, at the letterhead address or by telephone at (916) 928-5852 or email Sally.Howard@wildlife.ca.gov.

Sincerely, *Sammy Wong*
Sammy Wong, Assistant Branch Chief

on behalf of
Joshua Morgan, Chief
License and Revenue Branch

cc: Mr. Mike Yaun
Fish and Game Commission
Sacramento, California

Mr. William Caputo
Department of Fish and Wildlife
Sacramento, California

Ms. Sally Howard
Department of Fish and Wildlife
Sacramento, California

Conserving California's Wildlife Since 1870



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

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



January 9, 2019

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

Re: Department's Non-Participation *In the Matter of John Rosca*

Dear Commissioners:

The purpose of this letter is to inform you that the Department of Fish and Wildlife ("Department") will not be participating in a hearing regarding John Rosca's request to reinstate his trapping license ("Reinstatement Request"), and does not object to this Reinstatement Request.

Mr. Rosca's trapping license was suspended pursuant to California Code of Regulations, title 14, section 467, for failing to submit a trapping report by July 1, 2018¹. A licensee whose license is suspended may ask the Fish and Game Commission to reinstate it. After the deadline, Mr. Rosca submitted a trapping report for the past year.

Please note that if Mr. Rosca fails to timely submit a trapping report in a future year, the Department may object to a future Reinstatement Request made by him.

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

Sincerely,

DAVID KIENE
Senior Staff Counsel

Cc: John Rosca

¹ C.C.R., tit. 14, § 467 states, "All holders of trapping licenses must submit to the department a sworn statement or report by July 1 of his/her annual take of fur for the preceding trapping season. Statement or report shall show the number of each kind of furbearing mammals and nongame mammals taken, number sold, county in which furs were taken and the names and addresses of the persons to whom furs were shipped or sold. If the annual report is not received by July 1 following the most recent trapping year, or if it is not completely filled out, the trapper's license will be suspended. The commission shall be notified of any suspension and, subsequently, may revoke or reinstate applicant's license renewal application after written notice is given to the applicant and after he has been afforded an opportunity to be heard."



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

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



Certified Mail

August 31, 2015

RICHARD LOWELL ZELLERS

SUBJECT: NOTICE OF SUSPENSION OF TRAPPING LICENSE

Based on the Department of Fish and Wildlife (Department) license records, your 2014-2015 recreational Trapping License did not comply with the reporting requirements. In May, the Department sent you a renewal notice along with the Trapping Report Form (DFW1389a) and an explanation of the reporting requirements. The Department sent you a final notice in June to complete and return the Trapping Report Form via mail, fax or the Department's online service.

Pursuant to Section 467, Title 14, of the California Code of Regulations (CCR), recreational trappers are required to report their annual take of furs to the Department by July 1 each year, even if the take was zero furs, or their trapping license will be suspended.

Your Trapping License is hereby suspended and you are no longer eligible for a Trapping License based on non-compliance with Section 467, Title 14, of the CCR.

If you believe there are mitigating circumstances, which may warrant reinstatement of your license privileges, you may submit a written request for reinstatement to the California Fish and Game Commission at 1416 Ninth Street, Sacramento, California 95814, (916) 653-4899 or e-mail fgc@fgc.ca.gov.

In addition, the Department asks that your written request include a signed statement acknowledging, that you understand that you:

- (1) must submit a trapping report on or before July 1 each year even if you did not take any furs; and
- (2) will be subject to law enforcement action and could receive a more substantial suspension if you fail to submit a trapping report in the future as required in regulation.

If you believe you have been sent this notice in error, please contact Ms. Sally Howard of my staff, at the letterhead address or by telephone at (916) 928-5852 or e-mail Sally.Howard@wildlife.ca.gov.

Sincerely,

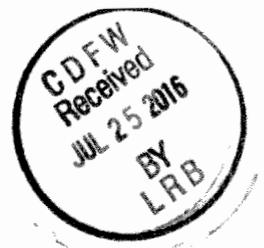
James Fong, Chief
License and Revenue Branch

Enclosure

Caputo, William@Wildlife

From: Richard L. Zellers [REDACTED]
Sent: Monday, August 01, 2016 9:41 AM
To: Caputo, William@Wildlife
Subject: appeal for license

Dear California Fish and Wildlife, I would like to request an appeal for my suspension of my 2014-2015 trapping licence for non reporting. Thank you, Richard Zellers

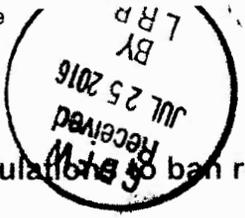


Dear Department of Fish and Wildlife (William Caputo)

Enclosed is my trapping report for last year 2015. I did not trap any animals or sell any furs. Also, I found the fax cover sheet that I sent to Sally which shows I sent the original trap report. Not that it is important at this point but I have enclosed it anyways just to show that I did send it in when I could. As per our conversation and the conversation I had with the Department in June of 2015. My wife was diagnosed with aggressive breast cancer in June and at the same time, I tore an artery in my stomach and had to be rushed to the hospital for emergency surgery. (We are also both teachers, so we were also trying to finish the school year on time.) Our medical conditions were terrible timing and we were trying to do the best we could with health, work, house, two small kids etc. Thus, I did not get the trapping report in on time. However, as you can see by the fax report, I did get it in by July 2. Either way, I am asking that you consider my circumstances allow me to continue receiving my California trapping license. Thanks, Richard Zellers

A handwritten signature in cursive script, appearing to read "Richard Zellers".





Effective November 20, 2015, regulations to ban recreational and commercial bobcat trapping statewide have been adopted.

Richard Ziller PERMANENT TRAP NO. 6314

SPECIES	TOTAL # SOLD	COUNTY														
		# KILLED	# TRAPS SET	# DAYS TRAPPED	# KILLED	# TRAPS SET	# DAYS TRAPPED	# KILLED	# TRAPS SET	# DAYS TRAPPED	# KILLED	# TRAPS SET	# DAYS TRAPPED	# KILLED	# TRAPS SET	# DAYS TRAPPED
BEAR	0															
COYOTE																
FOX																
WEASEL																
RAT																
SUMMIT																
MOON																
WEASEL																
SKUNK																
SKUNK																
R																

ALL BUYERS TO WHOM ANIMALS WERE SOLD. (Attach additional sheet if needed.)

BUYER'S NAME	ADDRESS	CITY	STATE	ZIP CODE	FUR DEALER	FUR DEALER LICENSE #
					<input type="checkbox"/> YES <input type="checkbox"/> NO	
					<input type="checkbox"/> YES <input type="checkbox"/> NO	
					<input type="checkbox"/> YES <input type="checkbox"/> NO	

By law you **must** complete a 2015-2016 Trapping Report or submit a sworn statement of your annual take of fur by July 1, 2016 or your trapping privileges will be suspended (Section 467, Title 14, of the California Code of Regulations). A Trapping Report is required if no animals were taken, enter "0" for number killed. The Trapping Report is not required for animals taken by licensees who provide trapping services for profit.

Sign and date the report. Incomplete reports will be returned.

Trapping reports can be submitted through the Department's online license sales and service at www.wildlife.ca.gov/licensing/online-sales, or mail this Trapping Report to the Department of Fish and Wildlife, License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834 or Fax to (916) 419-7586.

Contact the License and Revenue Branch at (916) 928-5852 or spu@wildlife.ca.gov if you have any questions about completing this form.

Buyer certifies that all information contained in this report is correct and true.

Signature X Richard Ziller

Date July 17 2016



Complimentary Self-Serve Fax Cover Sheet

To: Sally - Dept Fish & Wildlife

Fax #: 916-419-7586

Date: 7-2-2015

Number of Pages (Including Cover): 2

From: Richard Zellers

Phone #: [REDACTED]

Reply Fax #: [REDACTED]

Urgent Confidential

Please give to
Sally.

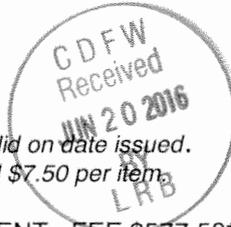
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State of California - Department of Fish and Wildlife
2016-2017 TRAPPING LICENSE APPLICATION
 DFW 1389 (Rev. 04/25/16)



DEPARTMENT USE ONLY
 PERMANENT TRAP NO.

6314

VALID JULY 1, 2016 THROUGH JUNE 30, 2017. *If issued after July 1, valid on date issued.*
**Fees include a nonrefundable three percent (3%) application fee, not to exceed \$7.50 per item.*

- CHECK ONE:** RESIDENT - FEE \$117.16* NONRESIDENT - FEE \$577.50* JUNIOR - FEE \$39.40*
CHECK ONE: NEW RENEWAL CHECK HERE IF MAILING ADDRESS CHANGED
CHECK ONE OR BOTH: RECREATION/INTENT TO SELL FURS PEST CONTROL OPERATOR

SEE INSTRUCTIONS ON REVERSE.

FIRST NAME Richard	M.I. L	LAST NAME Zellers	GO ID NUMBER (FROM ALDS ISSUED LICENSE)
-----------------------	-----------	----------------------	---

HAVE RESIDED IN CALIFORNIA CONTINUOUSLY FOR THE LAST SIX MONTHS YES NO

(Pursuant to FGC Section 70; "Resident" means any person who has resided continuously in the State of California for six months or more immediately prior to the date of his application for a license or permit, any person on active military duty with the Armed Forces of the United States or auxiliary branch thereof, or any person enrolled in the Job Corps established pursuant to Section 2883 of Title 29 of the United States Code.)

I certify that I have read, understand, and agree to abide by, all conditions of this license, the applicable provisions of the FGC, and the regulations promulgated thereto. I certify that I am not currently under any Fish and Wildlife license or permit revocation or suspension, and that there are no other legal or administrative proceedings pending that would disqualify me from obtaining this license. I agree that if I make any false statement as to any fact required as a prerequisite to the issuance of this license, the license is void and will be surrendered where purchased, and I understand that I may be subject to prosecution pursuant to FGC Section 1054 or to other administrative actions pursuant to Section 746, Title 14, of the CCR.

SIGNATURE X <u>Richard Zellers</u>	DATE 6/6/12
--	-----------------------

FOR DEPARTMENT OF FISH AND WILDLIFE USE ONLY	
REVIEWED BY/DATE <u>[Signature]</u> 6/20/16	ISSUED BY/DATE

**YOU MUST INCLUDE YOUR GO ID# OR A COPY OF YOUR IDENTIFICATION WITH THIS APPLICATION.
 THIS LICENSE DOES NOT RELIEVE THE LICENSEE FROM REQUIREMENTS FOR APPROPRIATE LOCAL, STATE, OR
 FEDERAL LAND USE PERMITS**

DEPARTMENT EXAM OFFICE	TRAPPING EXAM RESULTS SCORE <input type="checkbox"/> PASS <input type="checkbox"/> FAIL
PRINT EXAMINER'S NAME	EXAMINER'S SIGNATURE / DATE

Lic # 6314



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

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



Certified Mail

August 31, 2015

RICHARD LOWELL ZELLERS
[REDACTED]

SUBJECT: NOTICE OF SUSPENSION OF TRAPPING LICENSE

Based on the Department of Fish and Wildlife (Department) license records, your 2014-2015 recreational Trapping License did not comply with the reporting requirements. In May, the Department sent you a renewal notice along with the Trapping Report Form (DFW1389a) and an explanation of the reporting requirements. The Department sent you a final notice in June to complete and return the Trapping Report Form via mail, fax or the Department's online service.

Pursuant to Section 467, Title 14, of the California Code of Regulations (CCR), recreational trappers are required to report their annual take of furs to the Department by July 1 each year, even if the take was zero furs, or their trapping license will be suspended.

Your Trapping License is hereby suspended and you are no longer eligible for a Trapping License based on non-compliance with Section 467, Title 14, of the CCR.

If you believe there are mitigating circumstances, which may warrant reinstatement of your license privileges, you may submit a written request for reinstatement to the California Fish and Game Commission at 1416 Ninth Street, Sacramento, California 95814, (916) 653-4899 or e-mail fgc@fgc.ca.gov.

In addition, the Department asks that your written request include a signed statement acknowledging, that you understand that you:

- (1) must submit a trapping report on or before July 1 each year even if you did not take any furs; and
- (2) will be subject to law enforcement action and could receive a more substantial suspension if you fail to submit a trapping report in the future as required in regulation.

If you believe you have been sent this notice in error, please contact Ms. Sally Howard of my staff, at the letterhead address or by telephone at (916) 928-5852 or e-mail Sally.Howard@wildlife.ca.gov.

Sincerely,

James Fong, Chief
License and Revenue Branch

Enclosure

cc: Mr. Sonke Mastrup
Fish and Game Commission
Sacramento, California

Mr. David Bess, Chief/Deputy Director, Law Enforcement Division
Mr. Eric Loft, Chief, Wildlife Branch
Ms. Vandella Campbell
Ms. Sally Howard
Department of Fish and Wildlife
Sacramento, California



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

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



January 9, 2019

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

Re: Department's Non-Participation *In the Matter of Richard Zellers*

Dear Commissioners:

The purpose of this letter is to inform you that the Department of Fish and Wildlife ("Department") will not be participating in a hearing regarding Richard Zellers' request to reinstate his trapping license ("Reinstatement Request"), and does not object to his Reinstatement Request.

Mr. Zellers' trapping license was suspended pursuant to California Code of Regulations, title 14, section 467, for failing to submit a trapping report by July 1, 2015.¹ A licensee whose license is suspended may ask the Fish and Game Commission to reinstate it. After the deadline, Mr. Zellers submitted a trapping report for the previous year.

Please note that if Mr. Zellers fails to timely submit a trapping report in a future year, the Department may object to a future Reinstatement Request made by him.

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

Sincerely,

DAVID KIENE
Senior Staff Counsel

Cc: Richard Zellers

¹ C.C.R., tit. 14, § 467 states, "All holders of trapping licenses must submit to the department a sworn statement or report by July 1 of his/her annual take of fur for the preceding trapping season. Statement or report shall show the number of each kind of furbearing mammals and nongame mammals taken, number sold, county in which furs were taken and the names and addresses of the persons to whom furs were shipped or sold. If the annual report is not received by July 1 following the most recent trapping year, or if it is not completely filled out, the trapper's license will be suspended. The commission shall be notified of any suspension and, subsequently, may revoke or reinstate applicant's license renewal application after written notice is given to the applicant and after he has been afforded an opportunity to be heard."



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

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



Certified Mail

May 25, 2018

Mr. Larry D. Moore

Subject: **NOTICE OF DENIAL FOR REINSTATMENT OF DEEPER NEARSHORE SPECIES FISHERY PERMIT**

Dear Mr. Moore:

This letter is in response to your request to reinstate your Deeper Nearshore Species Fishery Permit (DNSFP), Permit Number DNS053 (L01904).

Authority-Deeper Nearshore Species Fishery Permit

Pursuant to Section 150.02 (g)(1), Title 14 of the California Code of Regulations (CCR), deeper nearshore species fishery permit holders must have held a valid permit in the immediately preceding permit year. Pursuant to Section 150.02(g)(2), Title 14, of the CCR, renewals of a DNSFP must be received by the Department of Fish and Wildlife (Department), or if mailed, postmarked on or before April 30 of each permit year.

Authority-Late Renewal Applications

Fish and Game Code (FGC) Section 7852.2, subdivision (a) establishes a graduated late fee for any renewal application that is received after the deadline.

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

Reason for Appeal to the Department

In your letter received April 2, 2018, you requested reinstatement of your DNSFP. You explained that you stopped renewing your DNSFP years ago because you had a traumatic injury and were not able to commercially fish. You are now asking to reinstate your DNSFP because you are now able to return to commercial fishing and you need your DNSFP to help care for you and your family.

Department Findings

Department license records show that you last held a valid 2015-2016 DNSFP, which made you eligible to renew your permit for the 2016-2017 permit year.

Mr. Larry D. Moore
June 1, 2018
Page Two

Department's Determination

Based on the previously stated information, your request to reinstate your DNSFP is denied, because you last held a valid DNSFP in the 2015-2016 permit year. As previously stated, FGC Section 7852.2(c) requires the Department to deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for the fishery.

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must submit a written request to the Fish and Game Commission (Commission) at P.O. Box 944209, Sacramento, CA 94244-2090, or you can request an appeal by emailing the Commission at fgc@fgc.ca.gov. Pursuant to FGC Section 7852.2(d), your appeal must be received within 60 days of the date of this letter. The Commission, upon consideration of the appeal, may grant the renewal of the DNSFP. If the Commission grants the renewal, it shall assess the applicable late fees.

The Commission will review the information you submit and will notify you in writing if your appeal will be scheduled before the Office of Administrative Hearings. If the Commission should recommend approval, full payment of \$1,861.62 would be due. A fee schedule is enclosed.

If you have any questions or require further assistance, please contact Ms. Debbie Noriega at (916) 928-5817 or Debbie.Noriega@wildlife.ca.gov.

Sincerely,



Joshua Morgan, Chief
License and Revenue Branch

Enclosure

cc: Mr. Michael Yaun
Fish and Game Commission
Sacramento, CA

Ms. Debbie Noriega
California Department of Fish and Wildlife
Sacramento, CA



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

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



Mr. Larry D Moore (L01904)
 Fees Required for Reinstatement for a
 Deeper Nearshore Species Fishery Permit (DNSFP)
 Permit Number DNS053

Prior Year Fees		Permit Fees
2016-2017	Resident Commercial Fishing License	\$ 136.73
	DNSFP	\$ 179.74
	Late Fee (61 days to March 31, 2017)	\$ <u>589.00</u>
		\$ 905.47
2017-2018	DNSFP	\$ 180.25
	Late Fee (61 days to March 31, 2018)	\$ <u>590.50</u>
		\$ 770.75
Prior Year Fees Due		\$ 1,676.22
Prior year permit fees must be paid before a 2018-2019 DNSFP can be issued.		
Current Year Fees		
2018-2019	DNSFP	\$ 185.40
Total Current Fees Due		\$ 185.40
Total Fees Due		\$ 1,861.62

If the Fish and Game Commission should recommend approval, full payment of \$1,861.62 would be due.

0/18/18

ATTN: JOSHUA MORGAN

THIS LETTER IS TO FILE FOR
AN APPEAL TO THE FISH & GAME COMMISSION

TO REINSTATE MY DNSFP I
RECEIVED THE DEPARTMENT'S LETTER
DENYING ME REINSTATEMENT OF MY
DNSFP, I DO UNDERSTAND THE DEPARTMENT'S
POSITION ON THIS BUT IM ALSO HOPING
THE COMMISSION WILL HOPEFULLY UNSTAND ~~MINI~~
MY FAMILY'S AND ~~THE~~ MYSELF'S NEED TO HAVE
MY PERMENT REINSTATED, I ALMOST LOST
THE FAMILY HOME TO FORECLOSER I HAVE
BEEN A GREAT BURDEN TO MY FAMILY, ITS
BEEN ALL WE CAN DO TO KEEP OUR HOME
AND FEED OURSELVES, I HAVE BEEN THROUGH
MANY HARD TIMES, BEING A COX FISHERMAN
IS A WAY OF LIFE FOR US, IT BEEN A LONG
HARD ROAD US, MY 7 CHILDREN & I HAVE
HAD TO STAND IN FOOD LINES TAKE HAND-OUTS
FROM FRIENDS SELL MOST EVERYTHING WE
HAD TO MAKE IT, THE TRAUMATIC BRAIN
INJURY I RECEIVED CHANGED OUR LIVES
FOREVER BUT WITH MY FAMILY AND THE
GRACE OF GOD, I KNOW IN MY HEART
I CAN TAKE CARE OF, MY FAMILY & CREW
ONCE AGAIN, I WANT TO BE PROUD OF
MYSELF AND MY FAMILY BE PROUD OF ME ASWELL

THERE'S VERY LITTLE WORK HERE FOR
SOMEONE LIKE ME, MOST OF MY CHILDREN HAVE
LEARNED OTHER WAYS TO LIVE, BUT THEY
HAVE FAMILY OF THEIR OWN TO TAKE CARE OF
I'M 60 YEARS OLD NOW THE YOUNGEST OF MY
CHILDREN STILL NEED ME

I WILL SOMEHOW GET THE 1,861.62
TO SAVE THE PERMIT, WE ARE ALL
PRAYING FOR THE DEPARTMENT TO UNDERSTAND
HOW IMPORTANT THIS IS TO US

THANK-YOU

LARRY D. MOORE

Jay D. Moore



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 15, 2019

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

Re: *In the Matter of Larry Moore*

Dear Commissioners:

This letter is in response to Larry Moore's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his Deeper Nearshore Species Fishery Permit # DNS053 ("DNSFP"). Mr. Moore submitted his appeal request to the Commission on June 18, 2018. His DNSFP was last valid during the 2015-16 fishing year. The Department will not be participating in this appeal and accordingly, does not object to the renewal of his DNSFP for the 2019-2020 fishing year, provided that he pays all applicable fees.

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

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

To emphasize that these fees must be paid, Section 7852.2, subdivision (b) states that "The department shall not waive the applicable late fee," while subdivision (d) states "If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." The fees total \$1,861.62 and are also described in the attached fee statement.

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

Sincerely,

DAVID KIENE
Senior Staff Counsel

Cc: Larry Moore



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

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



Mr. Larry D Moore (L01904)
 Fees Required for Reinstatement for a
 Deeper Nearshore Species Fishery Permit (DNSFP)
 Permit Number DNS053

Prior Year Fees		Permit Fees
2016-2017	Resident Commercial Fishing License	\$ 136.73
	DNSFP	\$ 179.74
	Late Fee (61 days to March 31, 2017)	\$ <u>589.00</u>
		\$ 905.47
2017-2018	DNSFP	\$ 180.25
	Late Fee (61 days to March 31, 2018)	\$ <u>590.50</u>
		\$ 770.75
Prior Year Fees Due		\$ 1,676.22
Prior year permit fees must be paid before a 2018-2019 DNSFP can be issued.		
Current Year Fees		
2018-2019	DNSFP	\$ 185.40
Total Current Fees Due		\$ 185.40
Total Fees Due		\$ 1,861.62

If the Fish and Game Commission should recommend approval, full payment of \$1,861.62 would be due.



State of California -The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
License and Revenue Branch
1740 N. Market Blvd
Sacramento, CA 95834
<http://www.wildlife.ca.gov>

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



Certified Mail

June 28, 2017

Mr. Salvatore Sardina

Subject: **NOTICE OF DENIAL FOR REINSTATEMENT OF SALMON VESSEL PERMIT,
PERMIT NUMBER SA0285 FOR THE F/V *Cathy S* (FG06956)**

Dear Mr. Sardina:

This is in response to your request to reinstate the Salmon Vessel Permit (SVP), Permit Number SA0285 for the F/V *Cathy S* (FG06956).

Authority-Salmon Vessel Permit

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

Authority-Late Renewal Applications

Effective April 1, 2008 pursuant to FGC Section 7852.2, a graduated late fee was established for any renewal application that is received after the deadline.

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

Reason for Appeal to the Department

In a June 20, 2017 e-mail, you are requesting reinstatement of the SVP for the F/V *Cathy S*. You explain that in June 2015, your wife was diagnosed with a serious medical condition and passed in February 2016. You state that you moved in with a friend and not all your mail was getting to you. As soon as you realized that the boat registration and SVP were not paid, you immediately paid the DMV registration. You tried to pay for the SVP but were told that you could not. You further explain that you did not purposely miss the payment and are sure you would have paid the fee on time if your wife was still alive.

Department Findings

Department license records show that the F/V *Cathy S* held a valid 2015-2016 SVP, which made you eligible to renew the permit for the 2016-2017 permit year.

Department Determination

Based on the previously stated information, your request to reinstate the SVP for the F/V *Cathy S* is denied, because the F/V *Cathy S* last held a valid SVP in the 2015-2016 permit year. The Department received the request to renew the SVP for the F/V *Cathy S* on June 20, 2017. FGC Section 7852.2(c), states that the Department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Conserving California's Wildlife Since 1870

Mr. Salvatore Sardina
June 28, 2017
Page Two

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must submit a written request to the Fish and Game Commission (Commission) at 1416 Ninth Street, Suite 1320, Sacramento, California 95814 or you can request an appeal by e-mailing the Commission at fgc@fgc.ca.gov. Pursuant to FGC Section 7852.2(d), your appeal must be received within 60 days of this letter. The Commission, upon consideration of the appeal, may grant renewal. If the Commission grants renewal, it shall assess the applicable late fee.

The Commission will review the information you submit and will notify you in writing if your appeal will be scheduled before the Office of Administrative Hearings. If the Commission should recommend approval, full payment of \$1,995.09 would be due. A fee schedule is enclosed.

If you have any questions or require further assistance, please contact Ms. Ruth Flores, of my staff, at the letterhead address, by telephone at (916) 928-7470, or e-mail Ruth.Flores@wildlife.ca.gov.

Sincerely,



James Fong, Chief
License and Revenue Branch

cc: Mr. Michael Yaun
Fish and Game Commission
Sacramento, California

Ms. Ruth Flores
Department of Fish and Game
Sacramento, California



State of California -The Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 1740 N. Market Blvd
 Sacramento, CA 95834
<http://www.wildlife.ca.gov>

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



June 28, 2017

Mr. Salvatore Sardina
 Fees Required for Reinstatement for a
 Salmon Vessel Permit (SVP)
 Permit Number SA0285
 F/V *Cathy S* (FG06956)

Prior Year Fees	Permit Fees
2016-2017 Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 356.00
SVP	\$ 43.00
Late Fee (61 days to March 31, 2017)	\$ <u>589.00</u>
	1,075.55
Prior Year Fees Due	\$ 1,075.55

Prior year permit fees must be paid before a 2017-2018 SVP can be issued.

Current Year Fees	
2017-2018 Commercial Fishing License	\$ 136.99
Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 357.00
SVP*	\$ 43.00
Late Fee (31 to 60 days)	\$ 295.00
Total Current Fees Due	\$ 919.54
Total Fees Due	\$ 1,995.09

If the Fish and Game Commission should recommend approval, full payment of \$1,995.09 would be due.

*Received request to renew SVP on June 20, 2017.

From: sal SARDINA

Sent: Wednesday, August 9, 2017 11:17 AM

To: FGC

Cc: Flores, Ruth@Wildlife

Subject: appeal

I would like to appeal the decision of denial for CA salmon permit # SA0285 for F/V Cathy S (FG06956). I have the funds to pay the full payment of \$1,995.09. The loss of permit causes a real hardship and I am hoping the decision can be over turned. Thank you very much for your time.

Sincerely,
Salvatore Sardina.



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 14, 2019

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

Re: *In the Matter of Salvatore Sardina*

Dear Commissioners:

This letter is in response to Salvatore Sardina's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his salmon vessel permit # SA0285 ("SVP"). Mr. Sardina submitted his appeal request to the Commission on August 9, 2017. His SVP was last valid during the 2015-16 fishing year. The Department will not be participating in this appeal and accordingly, does not object to the renewal of his SVP for the 2019-2020 fishing year, provided that he pays all applicable fees.

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

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

To emphasize that these fees must be paid, Section 7852.2, subdivision (b) states that "The department shall not waive the applicable late fee," while subdivision (d) states "If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." The fees total \$2,635.29 and are described in the attached fee statement.

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

Sincerely,

DAVID KIENE
Senior Staff Counsel

Cc: Salvatore Sardina



January 14, 2019

Mr. Salvatore Sardina
Fees Required for Reinstatement for a
Salmon Vessel Permit (SVP)
Permit Number SA0285
F/V Cathy S (FG06956)

Prior Year Fees	Permit Fees
2016-2017 Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 356.00
SVP	\$ 43.00
Late Fee (61 days to March 31, 2017)	\$ <u>589.00</u>
	1,075.55
2017-2018 Commercial Fishing License	\$ 136.99
Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 357.00
SVP*	\$ 43.00
Late Fee (31 to 60 days)	\$ <u>295.00</u>
	919.54
Prior Year Fees Due	\$ 1,995.09
Current Year Fees	
2018-2019 Commercial Fishing License	\$ 141.11
Commercial Fishing Salmon Stamp	\$ 87.55
Commercial Boat Registration	\$ 367.25
SVP	\$ <u>44.29</u>
Total Current Fees Due	\$ 640.20
Total Fees Due	\$ 2,635.29

If the Fish and Game Commission should recommend approval, full payment of \$2,635.29 would be due.

*Received request to renew SVP on June 20, 2017.

BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ADAM ROBERT SALVATORE ALIOTTI,

Respondent.

Case No. 17ALJ04-FGC

OAH No. 2017091047

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on October 22 and 23, 2018, in Oakland, California. This matter was consolidated for hearing with the Accusation against Alecia Dawn, Inc. (Case No. 17ALJ-FGC; OAH Case No. 2018030708).

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

Bradford Floyd, Attorney at Law, represented respondent Adam Robert Salvatore Aliotti, who was present throughout the administrative hearing.

The record was left open until December 14, 2018, for submission of closing briefs. Complainant's brief was marked for identification as Exhibit 17; respondent's brief was marked for identification as Exhibit L; complainant's reply was marked for identification as Exhibit 18. The transcripts of the hearing were not lodged by the parties. The record was closed and the matter was deemed submitted on December 14, 2018.

EVIDENTIARY RULING

Richard Petty and John Mercurio were interviewed by Fish and Game Warden Edward R. Walker while he was inspecting the off-loading of spot prawns on a commercial fishing vessel of which respondent was the captain. Respondent admits both Petty and Mercurio were his employees. Warden Walker reported statements made by Petty and by Mercurio in his Investigative Report, and he testified about those statements at hearing. Respondent objected to the admission of the out-of-court statements as hearsay, and the parties were offered the opportunity to brief the evidentiary question. Complainant argues that their statements are admissible as an exception to the hearsay rule pursuant to Evidence Code section 1224 (statement of a declarant whose liability or breach of duty is at issue).

(See *Atlas Assurance Co. v. McCombs Corp.* (1983) 146 Cal.App.3d 135.) Respondent's argument to the contrary is not persuasive. The hearsay objection is overruled and the statements of Petty and Mercurio are admitted as direct evidence. But even if the statements were admissible only as hearsay, and used pursuant to Government Code section 11513 to supplement or explain Walker's direct observations, there is sufficient direct evidence in this record to support findings regarding the conduct of Petty and Mercurio.

FACTUAL FINDINGS

Introduction

1. Complainant David Bess issued the Second Amended Accusation on July 12, 2018, in his official capacity as Chief of the Law Enforcement Division of the Department of Fish and Wildlife (Department). Complainant alleges 12¹ causes for discipline, based on conduct spanning from July 2014 to April 2018. Complainant seeks a five-year suspension of the commercial fishing license issued to respondent Adam Robert Salvatore Aliotti.

2. Respondent has held a commercial fishing license at all times relevant to this proceeding. On March 15, 2018, the Department renewed respondent's commercial fishing license.

3. Respondent is the President and Chief Executive Officer of Alecia Dawn, Inc. Respondent's father, Robert Salvatore Aliotti, is the Secretary and Chief Financial Officer of the corporation. Respondent's father is the majority shareholder, and respondent is a minority shareholder in the corporation.

4. The primary business of the corporation is fishing. In 2014 the corporation owned two commercial fishing vessels: the Alecia Dawn and the Ocean Warrior. The corporation sold the Alecia Dawn in 2018. At all times relevant to this proceeding, respondent served as captain of the vessel involved in the alleged misconduct.

Criminal Conviction

5. On May 11, 2015, respondent was convicted in the Superior Court of California, County of Monterey, on his plea of nolo contendere to two counts of violating California Code of Regulations, title 14, section 630, subdivision (a) (unlawful taking of fish in a state ecological reserve), infractions.² Respondent agreed to being placed on probation. Imposition of sentence was suspended, and respondent was placed on probation for three years. Respondent was ordered to pay \$4,250 in fines and assessments, in addition to other

¹ The tenth cause for discipline was withdrawn by complainant after hearing.

² All subsequent regulatory citations are to title 14 of the California Code of Regulations.

assessments. He was ordered to remove all Dungeness crab traps by the end of the Dungeness crab season each year (June 30) and to comply with all Fish and Game regulations.

6. The infraction charges were not initially charged in the criminal complaint, which charged respondent with six misdemeanor violations for conduct occurring on July 4, 2014, in connection with his Dungeness crab operation in District 17 outside of an ecological reserve. The complaint was amended to include the infraction charges on the motion of the district attorney. Respondent was convicted only of the two infractions.

7. Respondent credibly testified that his Dungeness crab traps were not located in an ecological reserve on July 4, 2014.

Taking of Dungeness Crabs after the Close of the 2013/2014 Season

8. The 2013-2014 Dungeness crab season for District 17, the district where respondent had his crab traps, closed on June 30, 2014. (Fish & G. Code, §§ 8726, subd. (b), 11025.) After the close of the season, as set forth below, Fish and Game wardens found 122 crab traps in the ocean belonging to the Alecia Dawn. In the 122 crab traps, respondent had captured a total of 732 Dungeness crabs. Some of the crabs in the traps were alive, some were not. Some of the crabs were male and some were female. Respondent did not notify Fish and Game that he had left crab traps in the water after the close of the season.

9. Lt. Brian Bailie is a Patrol Supervisor with the Department. He has been involved in marine enforcement for 14 years, and has extensive experience in the Dungeness crab fishery in Districts 17 and 18. Bailie participated in patrols of the Monterey Bay National Sanctuary on July 4, 5, 9, 10, and 19, 2014, along with other Fish and Game wardens, and provided credible testimony regarding his observations of the crab traps, and their condition. The crab trap lids were closed. In the experience of Bailie and other wardens, it is unusual to have this large number of crab traps left after the close of the season. In their experience, it is unusual to find dead crabs in crab traps. As set forth below, some of the crab traps and buoys lacked required tags. One crab trap lacked required openings.

10. Respondent normally does not leave crab traps in the water after June 30. In a normal season, he has moved on to salmon trawling by May 1. The 2013-2014 season was an anomaly because the Monterey Bay still had good quality and marketable crabs late in the season which allowed him to continue to trap to the end of the season.

11. Respondent testified that his last landing of Dungeness crab took place on June 30, 2014. They went through each trap, sorted the crabs, and removed the bait containers and mesh bags. He boarded two strings of traps, and left the remaining strings in the water, intending to remove them by July 15 so that no other vessel could retrieve them. He believed that all the buoys had their tags, or he would have replaced them. He believed that all the traps had their trap tags or he would have replaced them.

12. July 9, 2014, was the first day that respondent and his crew started to pull the remaining crab traps out of the water. They "rail dumped" all crabs in the traps back into the water. Because of the 42-foot size of the Alecia Dawn, it generally takes three trips to get all the gear out of the water.

Dungeness Crab Traps and Buoys

13. During the period of July 4 through 19, 2014, 33 of respondent's Dungeness crab trap buoys failed to be identified by his commercial fishing license number.

14. Respondent explained that he had borrowed crab traps from another fisherman, Mike Rickett, and the buoys attached thereto contained Rickett's commercial fishing license number. Respondent had not affixed his own commercial fishing license to the buoys because he believed it was legal to crab with Rickett's commercial fishing license number on the buoys.

15. During the period of July 4 through 19, 2014, one of respondent's Dungeness crab traps lacked required openings which allow for undersized crabs to escape. The trap openings were blocked.

16. Respondent cannot explain why this crab trap did not have the required openings.

17. During the period of July 4 through 19, 2014, 13 of the crab traps lacked a crab trap tag inside the trap.

18. During the period of July 4 through 19, 2014, four buoys lacked a biennial buoy tag affixed to the main buoy.

Over Limit of Sport Fishing Catch of Rockfish and Lingcod

19. On May 24, 2017, respondent and his friend Skylar Joseph Campbell went recreational fishing in Monterey County on the Ocean Warrior. State Game Wardens Sara Huntsman and Zack Gibson were on patrol off shore from Bird Rock.

20. Warden Huntsman saw respondent actively fishing, she did not see Campbell fishing. Huntsman, who had never met respondent before, boarded the Ocean Warrior and examined the catch and licenses. Respondent had a commercial fishing license and a sport fishing license. Campbell did not have any fishing license with him.

21. On board were 16 rockfish of several types and three lingcod. This exceeded the number of rockfish and lingcod permitted for a single person under sport fishing regulations (10 rockfish, and 2 lingcod). It did not exceed the number of rockfish or lingcod for two people.

22. Because respondent was the only person on board with a sport fishing license, Huntsman cited him for being over the limit of rockfish, and issued him a warning for being over the limit of lingcod. She returned one lingcod to the wild alive.

23. A citation charging respondent with an infraction violation of section 28.55, subdivision (b), of the regulations (exceeding rockfish limits) was filed in the Superior Court of California, County of Monterey, on October 25, 2017. Respondent forfeited bail on this charge on November 10, 2017.

24. Campbell is a commercial fisherman. He has been friends with respondent since 2013, and commercially fished with respondent until a year ago when he got his own boat and permits. Campbell had a 2017 sport fishing license, but had left it at home.

25. Both respondent and Campbell credibly testified that each of them fished and each of them caught fish that day. The evidence did not establish that respondent personally caught more fish than allowed for a single person.

26. Campbell testified that he told Huntsman that he had been fishing with respondent, that he was the one at fault for fishing without possessing his license and should be cited, not respondent. He protested Huntsman citing respondent. Huntsman does not recall that conversation, and the conversation is not recited in her report.

27. Campbell believed it was unfair for respondent to have been cited for his error, and is embarrassed. He gave respondent \$900 to cover the cost of the citation.

April 18, 2018

28. On April 18, 2018, Game Warden Edward R. Walker III conducted a routine inspection of the offloading of the spot prawn catch of the Ocean Warrior at the Monterey Harbor. Walker was a credible witness regarding the inspection he conducted that day, his observations, and statements made to him. Richard Alan Petty and another man were on board scooping spot prawns from holding tanks into smaller bins for measurement. John Salvatore Mercurio was sitting in the cabin. Respondent was on the dock when Walker arrived. Respondent admitted that both Petty and Mercurio were employees of the corporation.

29. Petty did not have a valid commercial fishing license or a valid general trap permit in his possession. Both his commercial fishing license and his general trap permit had expired. In addition to the observations he made regarding Petty's conduct, Petty admitted to Walker that he had assisted in taking spot prawns that day. Walker issued Petty a citation for not having in his possession a valid commercial fishing license or a valid general trap permit.

30. Petty was charged in the Superior Court of California, County of Monterey, with two misdemeanor Fish and Game Code violations: section 9001, subdivision (b) (no trap permit), and section 7850, subdivision (b) (no commercial fishing license). Petty was

convicted, on his plea of guilty, on July 31, 2018. Imposition of sentence was suspended, and he was placed on probation for three years. Petty was fined \$850 and ordered to always have appropriate permits and licenses to fish.

31. Mercurio told Walker that he was merely observing the fishing that day. As an observer on a commercial fishing vessel, Mercurio was required to complete an observer log maintained by the vessel's owner or operator. (Fish & G. Code, § 7580, subd. (b).) Mercurio could not and did not provide Walker with an observer log. There was no valid observer log on board the vessel.

32. Later on the dock, Mercurio handed Walker a slip of ripped paper on which it was handwritten: "Observer;" "Johnny S. Mercurio;" and the date and time. Mercurio professed that the paper had been stored in his sock. Because of the condition of the paper, Walker did not believe Mercurio, and did not find the proffered paper to constitute a valid observer log.

33. One bin on the Ocean Warrior contained a mesh bag with nine octopi. When Walker questioned respondent about the octopi, respondent claimed he had caught them for sport in dedicated octopi traps, and that he planned on taking them for use by family and friends. Respondent denied that the octopi had been caught in his spot prawn traps, and expressed to Walker that he knew octopi were not permitted bycatch for commercial spot prawns.

34. Walker initially cited respondent for a sport take of octopi while on a commercial vessel. Over the next week, respondent spoke with Bailie about the legality of keeping octopi as incidental catch. Bailie advised respondent that octopi could not be kept as incidental catch in spot prawn traps, and Bailie reported that conversation to Walker. Walker and respondent spoke again on May 1, at which time respondent admitted to Walker that the nine octopi he caught and kept on April 18 were bycatch in his spot prawn traps.

Respondent's Other Evidence

35. Respondent has been in the commercial fishing industry for 16 years. He left high school early to join his father's commercial fishing business, finishing his education later through earning a GED. Respondent is 30 years old, married, and provides the sole support of his wife and two stepchildren. Commercial fishing is all he has ever done to earn a living. He has knowledge and experience in the following fisheries: Dungeness crab, spot prawn, black cod and troll salmon.

36. Respondent took over his father's business in 2007, with his father retaining 51 percent ownership in Alecia Dawn, Inc. The Alecia Dawn was sold in April 2018 with her commercial salmon trolling and Dungeness crab permits.

37. Respondent has periodically kept octopi over the course of the spot prawn season, but the majority of the time he has let them go. He did not know it was a violation of

law to retain octopi as bycatch. He believes it is common practice among those in the spot prawn industry to retain octopi.

38. Respondent's father Robert Aliotti also started fishing in high school and fished on and off until his retirement in 2008 when he passed the Alecia Dawn onto Aliotti. At the time of the sale, the vessel had permits for commercial salmon, spot prawn and Dungeness crab. Robert Aliotti was involved in the spot prawn industry in Monterey County until his retirement in 2008. He routinely kept octopi as bycatch of spot prawn in the last 10 years of fishing, as did others the spot prawn industry that he knew. Robert Aliotti's father and grandfather were involved in the development of the spot prawn industry in California.

39. Giovanni Aliotti has been a commercial fisherman in Monterey County since 1986. In addition to spot prawns, he is involved in the fisheries of salmon trolling, herring and halibut. He often gets incidental catches in his spot prawn traps, including octopi. He has always kept the octopi for his family to eat. He has never hidden the catch, and reported the octopi on landing receipts. He believes he has had octopi visible on his boat when his spot prawn catch has been inspected by wardens between 1999 and April 2018. He has never been cited for this until recently.

40. Richard Howard Hauschel has been a full-time commercial fisherman in Monterey County since 2008. Before that time, he periodically fished commercially. His fisheries are spot prawn, Dungeness crab, salmon and black cod. He primarily fishes in the Half Moon Bay area, but travels farther north as well.

Hauschel normally removes his crab traps before the start of salmon season, but did not understand that crab traps had to be out of the water by June 30; he has left them in longer if the weather made it unsafe to remove them. He has seen other crab fisherman leave their traps in the water after June 30. Between 2008 and April 2018 he has kept octopi as incidental catch of spot prawn, which was the practice in the field. He did not hide the octopi. The octopi were visible on his vessel when wardens have been present, and he lists them on his landing receipts. Hauschel believed it was legal to retain the octopi. It was only recently that he has been told that it is not permitted.

41. Bailie knows respondent well and they have a good working relationship. Bailie also knows respondent's father. In his opinion, respondent is not an outlaw ("not at all"), and does not have a reputation as an outlaw. Bailie and respondent have had numerous informal conversations over the years about the requirements of the commercial fishing laws.

LEGAL CONCLUSIONS

1. The burden of proof in this proceeding is on complainant. (Evid. Code § 500.) The parties agree that the applicable standard of proof is preponderance of the evidence.

(Evid. Code, 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].)

2. Fish and Game Code section 7857, subdivision (b)(2), authorizes the Commission to suspend, revoke or cancel commercial fishing privileges for a period of time, for a violation of the Fish and Game Code or the regulations adopted thereunder, or a violation of the terms of the permit or entitlement, by any of the following persons: “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 and control.”

3. Fish and Game Code section 12158.5 provides:

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 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.

First Cause for Discipline

4. Regulation section 630 prohibits fishing for commercial purposes in an ecological reserve. On May 11, 2015, respondent was convicted of two counts of violating this section. (Finding 3.) Respondent argues that he cannot be disciplined for this violation because he did not fish in an ecological reserve. (Finding 7.) A conviction based on a nolo contendere plea to a violation of the Fish and Game Code or the Department’s regulations is a conviction under Fish and Game Code section 12158.5. As such, respondent cannot collaterally attack the conviction in this administrative proceeding. (*Arneson v. Fox* (1980) 28 Cal.3d 440.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Second Cause for Discipline

5. Fish and Game Code section 2001, provides that it is unlawful “to take” a fish outside of an established season. Dungeness crabs fall within the definition of fish. (Fish & G. Code, § 45 [defining fish as “a wild . . . crustacean . . . or part, spawn, or ovum of any of those animals”].) The term “take” is defined as: “hunt, catch, capture or kill, to attempt to hunt, pursue, catch, capture or kill.” (Fish & G. Code, § 86.)

The Dungeness crab season pertaining to District 17 opens on November 15 and closes on June 30, as set forth in Fish and Game Code section 8276, subdivision (b):

Dungeness crab may be taken for commercial purposes in all other districts only between November 15 and June 30.

Respondent left 122 crab traps in the ocean after the close of the 2014 season, and thereafter to July 19, 2014, captured a total of 732 Dungeness crabs in violation of section 2001. (Finding 8.)

Respondent argues that he cannot be cited for a violation of section 2001 because he did not take the crabs for “commercial purposes” within the meaning of Fish and Game Code section 8276, subdivision (b). The term “commercial purposes” is not defined in the Fish and Game Code. Respondent argues that his taking of the Dungeness crab could not be considered for commercial purposes because he did not intend to sell the crab he captured in his traps. Respondent’s intent to make a profit from the Dungeness crab he took is not the key to finding commercial activity. The crab traps were in the water because of respondent’s commercial activity. The capture of the crabs after the close of the season was associated with that commercial activity. A violation of Fish and Game Code section 2001 was established. Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Third Cause for Discipline

6. Fish and Game Code section 9006 requires every trap used to take Dungeness crab be marked with a buoy that contains the commercial fishing license identification number of the trap operator. Between July 4 and 19, 2014, 33 of respondent’s buoys were not marked with his commercial fishing license number in violation of this section. (Finding 14.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Fourth Cause for Discipline

7. Fish and Game Code section 9011, subdivision (a)(2), requires every Dungeness crab trap to have at least two rigid circular openings of not less than four and one-quarter inches, inside diameter, on the top or the side of the trap. Between July 4 and 19, 2014, one of respondent’s Dungeness crab traps lacked two such openings. (Finding 17.) Cause for disciplinary action exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Fifth Cause for Discipline

8. Subdivision (a) of section 132.1 of the regulations requires every Dungeness crab trap to have a valid Dungeness crab tag attached to it. The tag must contain the trap owner’s telephone number. If the tag is missing, or the information on the tag is illegible or incorrect, the trap is deemed out of compliance and cannot be used to take Dungeness crab for commercial purposes. (*Ibid.*) Between July 4 and 19, 2014, 13 of the crab traps used by respondent did not have a crab trap tag. (Finding 18.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Sixth Cause for Discipline

9. Section 132.1 of the regulations requires every Dungeness crab trap placed in the water for commercial purposes to be marked with a buoy. Each crab trap is required to have a biennial buoy tag affixed to the main buoy. (Subd. (b).) Between July 4 and 19, 2014, four of respondent's crab traps did not have a biennial buoy tag affixed to the main buoy. (Finding 18.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Seventh Cause for Discipline

10. Section 28.55, subdivision (b), of the regulations limits the amount of rockfish that can be taken to 10. By virtue of the bail forfeiture on the citation charging him with violating this regulation (Finding 23), respondent is deemed to have been convicted of the violation pursuant to Fish and Game Code section 12158.5, and to have violated the section. Respondent argues that he in fact did not commit the violation. Respondent cannot collaterally attack the conviction in this administrative proceeding. (*Arneson v. Fox, supra*, 28 Cal.3d 440.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Eighth Cause for Discipline

11. Section 28.27, subdivision (b), of the regulations limits the amount of lingcod that can be taken to two. It was not established by the preponderance of the evidence that respondent exceeded this limit on May 24, 2017, as alleged. (Findings 20, 21 & 25.) There is no cause for disciplinary action pursuant to Fish and Game Code section 7857, subdivision (b)(2), for this alleged violation.

Ninth Cause for Discipline

12. Fish and Game Code section 8595, subdivision (b), provides that no species other than prawn shall be taken in a prawn trap. Any other species taken incidentally in a prawn trap "shall immediately be released." On April 18, 2018, respondent took and retained nine octopi he had captured in spot prawn traps. (Findings 33 & 34.) Cause for disciplinary action exists against respondent pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Eleventh Cause for Discipline

13. Fish and Game Code section 7850, subdivision (a), requires a commercial license in order to use, operate or assist in the operation of a boat or trap to take any fish for commercial purposes, or to bring ashore any fish for the purpose of selling them in a fresh state or to contribute materially to the activities on board any commercial fishing vessel. On April 18, 2018, Petty, who was acting as an employee of respondent, and as a person under respondent's control, failed to hold a valid commercial license when working on the Ocean

Warrior, and performing the duties for which a commercial license was required under this section. (Findings 28-30.) Cause for disciplinary action exists against respondent pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Twelfth Cause for Discipline

14. Fish and Game Code section 9001, subdivision (b), requires a general trap permit in order to operate or assist in the operation of any trap to take mollusks or crustaceans on any commercial vessel when any trap is aboard. On April 18, 2018, Petty, who was acting as an employee of respondent, and as a person under respondent's control, failed to hold a valid general trap permit when working on the Ocean Warrior, and performing the duties for which a general trap permit was required under this section. (Findings 28-30.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Thirteenth Cause for Discipline

15. Fish and Game Code section 7850, subdivision (b), provides that any nonlicensed person on board a commercial vessel must "register his or her presence on board the commercial fishing vessel in a log maintained by the owner or operator of the vessel in accordance with the requirements of the department." Mercurio's presence on the Ocean Warrior on April 18, 2018, was not registered in a log maintained by respondent as operator of the vessel in violation of this section. (Findings 28, 31 & 32.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Disciplinary Considerations

16. In July 2014, respondent took 732 Dungeness crabs after the close of the crab season; had 33 crab trap buoys that lacked his commercial fishing license number; had 13 crab traps without crab trap tags; had four crab traps without biennial buoy tags affixed to the main buoy; and one crab trap whose openings were blocked. The violations range in their seriousness, but there are many of them. According to the wardens, in their experience, many of these violations are unusual.

In May 2015, respondent was convicted of two infractions for fishing inside an ecological reserve for Dungeness crab, and was placed on probation for three years.

In May 2017, respondent was convicted of catching six rockfish over the limit of 10 while sport fishing.

In April 2018, respondent violated the fishery laws again by not releasing the nine octopi caught in his spot prawn traps. More serious is respondent's failure to adequately supervise employees. He permitted Petty to work on the vessel without a valid commercial fishing license or a valid prawn trap permit. As the operator, it was his obligation to ensure

all employees had valid licenses and permits. Petty was convicted of two misdemeanors as a result of this incident. Corporate employee Mercurio lied to the warden and presented a phony observation log. Respondent did nothing to supervise or correct Mercurio in this interaction with the warden.

Complainant seeks a five-year suspension of respondent's commercial fishing license, arguing that respondent's violations, and those of his employees, show a pattern of conduct that threatens marine fishery resources. And in aggravation, respondent's May 2017 conviction and April 2018 violations occurred while respondent was on criminal probation for his May 2015 convictions, when he had been ordered by the court to obey all laws and regulations of the Department.

Respondent argues that a five-year suspension is too drastic a penalty in light of the types of violations he committed. Such a suspension, he argues, would have a significant impact on his livelihood.

Although respondent may want to be compliant with the Fish and Game law, he has fallen short of compliance often and over many years in contravention of the laws intended to protect marine fishery resources. All things considered, complainant has presented sufficient evidence to support the imposition of a significant suspension of respondent's commercial fishing license.

ORDER

The Commercial Fishing License issued to respondent Adam Robert Salvatore Aliotti is suspended for a period of five years.

DATED: January 15, 2019

DocuSigned by:
Melissa G. Crowell
ACEB7AA338CE4C0
MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

OFFICE OF ADMINISTRATIVE HEARINGS

State of California



EXHIBIT / WITNESS LIST

OAH 23 (rev. 2/03)

OAH No. 207091047 & 2018030708

ALJ: MELISSA G. CROWELL

Agency 17ALJ04-FGC/ 17 ALJ-FGC

Agency / Complainant: Fish and Game	Case Name / Respondent: Adam Aliotti/ Alecia Dawn
Attorney: David Keene	Attorney: Bradford Floyd

Marked for I.D.	Hearing Date: 10/22 and 10/23/2018	Evidence Admitted Date -AH- Jurisdiction	Marked for I.D.	Evidence Offered - (via Witness)	Evidence Admitted Date -AH- Jurisdiction
	Evidence Offered - (via Witness)				
1.	First Amended Accusation (Alecia Dawn)	J	A.	2018 California Commercial Fishing Digest	ID
2.	Second Amended Accusation (Aliotti)	J	B.	2017 California Commercial Fishing Digest (excerpts)	ID
3.	Order Granting Continuance/Consolidation	J	C.	Fish and Game Code section 8276	ID
4.	Notice of Hearing	J	D.	Fish and Game Code section 86	ID
5.	Sec of State Certificate of Status, Alecia Dawn Inc., dated 12/8/2017	X	E.	Fish and Game Code section 8278	ID
6.	Case Summary (Aliotti)	X	F.	Fish and Game Code section 8283	ID
7.	Criminal Complaint (Petty)	X	G.	Fish and Game Code section 8279	ID
8.	Plea Form (Petty)	X	H.	Fish and Game Code section 8284	ID
9.	Minute Order (Petty)	X	I.	14 CCR section 132.2	ID
10.	Criminal Complaint (Aliotti)	X	J.	Diagram of Crab Pot	ID
11.	Arrest/Investigation Report dated 5/30/2017 (Aliotti)	X	K.	2010 California Commercial Fishing Laws and Licensing Requirements (excerpts)	ID
12.	Arrest/Investigation Report dated 6/13/2018 (Aliotti)	X	L.	Closing Brief	ID
13.	Photograph	X	M.		
14.	Arrest/Investigation Report dated 5/3/2018 (Aliotti)	X	N.		
15.	Withdrawn		O.		
16.	Arrest/Investigation Report dated 9/30/2014 (Aliotti)	X	P.		
17.	Opening brief	ID	Q.		
18.	Reply brief	ID	R.		
19.			S.		
20.			T.		
21.			U.		
22.			V.		

COMPLAINANT WITNESSES	RELEASED	RESPONDENT WITNESSES	RELEASED
1. SARA HUNTSMAN		1 ROBERT SALVATORE ALIOTTI	
2. EDWARD WALKER		2. JOHN ALIOTTI GIOVANNI	
3. RYAN KEMP		3. RICHARD HAUSCHEL	
4. BRIAN BAILEE		4. SKYLAR CAMPBELL	
5. KEVIN DEROSE		5. RESPONDENT ADAM ROBERT SALVATORE ALIOTTI	
6. JASON AMES		6.	
7.		7.	
8.		8.	
9.		9.	
10.		10.	
11.		11.	
12.		12.	
13.		13.	

BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALECIA DAWN, INC.,

Respondent.

Case No. 17ALJ-FGC

OAH No. 2018030708

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on October 22 and 23, 2018, in Oakland, California. This matter was consolidated for hearing with the Accusation against Adam Robert Salvatore Aliotti (Agency Case. No. 17ALJ-04-FGC; OAH Case No. 2017091047.)

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

Bradford Floyd, Attorney at Law, represented respondent Alecia Dawn, Inc.

The record was left open until December 14, 2018, for submission of closing briefs. Complainant's brief was marked for identification as Exhibit 17; respondent's brief was marked for identification as Exhibit L; complainant's reply was marked for identification as Exhibit 18. The transcripts of the hearing were not lodged by the parties. The record was closed and the matter was deemed submitted on December 14, 2018.

EVIDENTIARY RULING

Respondent's employees Richard Petty and John Mercurio were interviewed by Fish and Game Warden Edward R. Walker while he was inspecting the off-loading of spot prawns on respondent's commercial fishing vessel. Warden Walker reported statements made by Petty and by Mercurio in his Investigative Report, and he testified about those statements at hearing. Respondent objected to the admission of the out-of-court statements as hearsay, and the parties were offered the opportunity to brief the evidentiary question. Complainant argues that their statements are admissible as an exception to the hearsay rule pursuant to Evidence Code section 1224 (statement of a declarant whose liability or breach of duty is at issue). (See *Atlas Assurance Co. v. McCombs Corp.* (1983) 146 Cal.App.3d 135.) Respondent's argument to the contrary is not persuasive. The hearsay objection is overruled.

and the statements of Petty and Mercurio are admitted as direct evidence. But even if the statements were admissible only as hearsay, and used pursuant to Government Code section 11513 to supplement or explain Walker's observations, there is sufficient direct evidence in this record to support findings regarding the conduct of Petty and Mercurio.

FACTUAL FINDINGS

Introduction

1. Complainant David Bess issued the First Amended Accusation on July 12, 2018, in his official capacity as Chief of the Law Enforcement Division of the Department of Fish and Wildlife (Department). Complainant alleges 10 causes for discipline based on conduct spanning from July 2014 to April 2018.¹ Complainant seeks a one-year revocation of the Tier 1 Spot Prawn Trap Vessel Permit issued to respondent Alecia Dawn, Inc.

2. Respondent is a domestic corporation formed in May 2013. Adam Robert Salvatore Aliotti (Aliotti) is respondent's President and Chief Executive Officer. Aliotti's father, Robert Salvatore Aliotti, is respondent's Secretary and Chief Financial Officer. Robert Aliotti is the majority shareholder, and Aliotti is the minority shareholder.

3. The primary business of the corporation is fishing. In 2014 the corporation owned two commercial fishing vessels: the Alecia Dawn and the Ocean Warrior. The corporation sold the Alecia Dawn in 2018. At all times relevant to this proceeding, Aliotti served as captain of the vessel involved in the alleged misconduct, and was acting as an agent, employee or person acting under respondent's direction or control.

4. On March 15, 2018, the Department issued to respondent a Tier 1 Spot Prawn Trap Vessel Permit (Permit No. SP10016). The permit was in full force and effect at all times relevant to this proceeding.

Criminal Conviction

5. On May 11, 2015, Aliotti was convicted in the Superior Court of California, County of Monterey, on his plea of nolo contendere to two counts of violating California Code of Regulations, title 14, section 630, subdivision (a) (unlawful taking of fish in a state ecological reserve), infractions.² Aliotti agreed to being placed on probation. Imposition of sentence was suspended, and Aliotti was placed on probation for three years. Aliotti was ordered to pay \$4,250 in fines and assessments, in addition to other assessments. He was

¹ The eighth cause for discipline was withdrawn by complainant after hearing.

² All subsequent regulatory citations are to title 14 of the California Code of Regulations.

ordered to remove all Dungeness crab traps by the end of the Dungeness crab season each year (June 30) and to comply with all Fish and Game regulations.

6. The infraction charges were not initially charged in the criminal complaint, which charged Aliotti with six misdemeanor violations for conduct occurring on July 4, 2014, in connection with respondent's Dungeness crab operation in District 17 outside of an ecological reserve. The complaint was amended to include the infraction charges on the motion of the district attorney. Aliotti was convicted only of the two infractions.

7. Aliotti credibly testified that his Dungeness crab traps were not located in an ecological reserve on July 4, 2014.

Taking of Dungeness Crabs after the Close of the 2013/2014 Season

8. The 2013-2014 Dungeness crab season for District 17, the district where respondent had its crab traps, closed on June 30, 2014. (Fish & G. Code, §§ 8726, subd. (b), 11025.) After the season ended Fish and Game wardens found 122 crab traps in the ocean belonging to respondent. In the 122 traps, respondent had captured a total of 732 Dungeness crabs. Some of the crabs in the traps were alive, some were not. Some of the crabs were male and some were female. The Department was not notified that the crab traps had been left in the water after the close of the season.

9. Lt. Brian Bailie is a Patrol Supervisor with the Department. He has been involved in marine enforcement for 14 years, and has extensive experience in the Dungeness crab fishery in Districts 17 and 18. Bailie participated in patrols of the Monterey Bay National Sanctuary on July 4, 5, 9, 10, and 19, 2014, along with other Fish and Game wardens, and provided credible testimony regarding his observations of the crab traps, and their condition. The crab trap lids were closed. In the experience of Bailie and other wardens, it is unusual to have this large number of crab traps left after the close of the season. In their experience, it is unusual to find dead crabs in crab traps. As set forth below, some of the crab traps and buoys lacked required tags. One crab trap lacked required openings.

10. Aliotti testified that he normally does not leave crab traps in the water after June 30. In a normal season, they have moved on to salmon trawling by May 1. The 2013-2014 season was an anomaly because the Monterey Bay still had good quality and marketable crabs late in the season which allowed him to continue to trap to the end of the season.

11. Aliotti testified that his last landing of crab took place on June 30, 2014. They went through each trap, sorted the crabs, and removed the bait containers and mesh bags. He boarded two strings of traps, and left the remaining strings in the water, intending to remove them by July 15 so that no other vessel could retrieve them. He believed that all the buoys had their tags, or he would have replaced them. He believed that all the traps had their trap tags or he would have replaced them.

12. July 9, 2014, was the first day that Aliotti and his crew started to pull the remaining crab traps out of the water. They "rail dumped" all crabs in the traps back into the water. Because of the 42-foot size of the Alecia Dawn, it generally takes three trips to retrieve the gear out of the water.

Dungeness Crab Traps and Buoys

13. During the period of July 4 through 19, 2014, 33 of respondent's Dungeness crab trap buoys failed to be identified by Aliotti's commercial fishing license number.

14. Aliotti explained that he had borrowed crab traps from another fisherman, Mike Rickett, and the buoys attached thereto contained Rickett's commercial fishing license number. Aliotti had not affixed his own commercial fishing license to the buoys because he believed it was legal to crab with Rickett's commercial fishing license number on the buoys.

15. During the period of July 4 through 19, 2014, one of respondent's Dungeness crab traps lacked required openings which allow for undersized crabs to escape. The trap openings were blocked.

16. Aliotti cannot explain why this crab trap did not have the required openings.

17. During the period of July 4 through 19, 2014, 13 of the crab traps lacked a crab trap tag inside the trap.

18. During the period of July 4 through 19, 2014, four buoys lacked a biennial buoy tag affixed to the main buoy.

April 18, 2018

19. On April 18, 2018, Game Warden Edward R. Walker III conducted a routine inspection of the offloading of the spot prawn catch of the Ocean Warrior at the Monterey Harbor. Walker was a credible witness regarding the inspection he conducted that day, his observations, and statements made to him. Richard Alan Petty and another man were on board scooping spot prawns from holding tanks into smaller bins for measurement. John Salvatore Mercurio was sitting in the cabin. Aliotti was on the dock when Walker arrived. Both Petty and Mercurio are employees of respondent.

20. Petty did not have a valid commercial fishing license or a valid general trap permit in his possession. Both his commercial fishing license and his general trap permit had expired. Petty admitted to Walker that he had assisted in taking spot prawns that day. Walker issued Petty a citation for not having in his possession a valid commercial fishing license or a valid general trap permit.

21. Petty was charged in the Superior Court of California, County of Monterey, with two misdemeanor Fish and Game Code violations: section 9001, subdivision (b) (no

trap permit), and section 7850, subdivision (b) (no commercial fishing license). Petty was convicted, on his plea of guilty, on July 31, 2018. Imposition of sentence was suspended, and he was placed on probation for three years. Petty was fined \$850 and ordered to always have appropriate permits and licenses to fish.

22. Mercurio told Walker that he was merely observing the fishing that day. As an observer on a commercial fishing vessel, Mercurio was required to complete an observer log maintained by the vessel's owner or operator. (Fish & G. Code, § 7580, subd. (b).) Mercurio could not and did not provide Walker with an observer log. There was no valid observer log on board the vessel.

23. Later, on the dock, Mercurio handed Walker a slip of ripped paper on which it was handwritten: "Observer;" "Johnny S. Mercurio;" and the date and time. Mercurio professed that the paper had been stored in his sock. Because of the condition of the paper, Walker did not believe Mercurio, and did not find the proffered paper to constitute a valid observer log.

24. One bin on the Ocean Warrior contained a mesh bag with nine octopi. When Walker questioned Aliotti about the octopi, Aliotti claimed he had caught them for sport in dedicated octopi traps, and that he planned on taking them for use by family and friends. Aliotti denied that the octopi had been caught in his spot prawn traps, and expressed to Walker that he knew octopi were not permitted bycatch for commercial spot prawns.

25. Walker initially cited Aliotti for a sport take of octopi while in a commercial vessel. Over the next weeks, respondent spoke with Bailie about the legality of keeping octopi as incidental catch. Bailie advised respondent that octopi could not be kept as incidental catch in spot prawn traps, and Bailie reported that conversation to Walker. Walker and respondent spoke again on May 1, at which time respondent admitted to Walker that the nine octopi he caught and kept on April 18 were bycatch in his spot prawn traps.

Respondent's Other Evidence

26. Aliotti has been in the commercial fishing industry for 16 years. He left high school to join his father's commercial fishing business, finishing his education later through earning a GED. Aliotti is 30 years old, married, and provides the sole support of his wife and two stepchildren. Commercial fishing is all he has ever done to earn a living. He has knowledge and experience in the following fisheries: Dungeness crab, spot prawn, black cod and troll salmon.

27. Aliotti took over his father's business in 2007, with his father retaining 51 percent ownership in respondent. The Alecia Dawn was sold in April 2018 with her commercial salmon trolling and Dungeness crab permits.

28. Aliotti has periodically kept octopi over the course of the spot prawn season, but the majority of the time he has let them go. He did not know it was a violation of law to

retain octopi as bycatch. He believes it is common practice among those in the spot prawn fishery to do so.

29. Robert Aliotti also started fishing in high school and fished on and off until his retirement in 2008 when he passed the Alecia Dawn onto Aliotti. At that time the vessel had permits for commercial salmon, spot prawn and Dungeness crab. Robert Aliotti was involved in the spot prawn industry in Monterey County until his retirement in 2008. Robert Aliotti routinely kept octopi as bycatch of spot prawn in his last 10 years of fishing, as did other spot prawn fishers he knew. Robert Aliotti's father and grandfather were involved in the development of the spot prawn industry in California.

30. Giovanni Aliotti has been a commercial fisherman in Monterey County since 1986. In addition to spot prawns, he is involved in the fisheries of salmon trolling, herring and halibut. He often gets incidental catches in his spot prawn traps, including octopi. He has always kept the octopi for his family to eat. He has never hidden the catch, and reported the octopi on landing receipts. He believes he has had octopi visible on his boat when his spot prawn catch has been inspected by wardens between 1999 and April 2018. He has never been cited for this until recently.

31. Richard Howard Hauschel has been a full-time commercial fisherman in Monterey County since 2008. Before that time, he periodically fished commercially. His fisheries are spot prawn, Dungeness crab, salmon and black cod. He primarily fishes in the Half Moon Bay area, but travels farther north as well.

Hauschel normally removes his crab traps before the start of salmon season, but did not understand that crab traps had to be out of the water by June 30; he has left them in longer if the weather made it unsafe to remove them. He has seen other crab fisherman leave their traps in the water after June 30. Between 2008 and April 2018 he has kept octopi as incidental catch of spot prawn, which was the practice in the field. He did not hide the octopi. The octopi were visible on the vessel when wardens have been present, and he lists them on his landing receipts. Hauschel believed it was legal to retain the octopi. It was only recently that he has been told that it is not permitted.

32. Bailie knows Aliotti well and they have had a good working relationship over the years. Bailie also knows Aliotti's father. In his opinion, Aliotti is not an outlaw ("not at all"), and does not have a reputation as an outlaw. Bailie and Aliotti have had numerous informal conversations about various commercial fishing laws.

LEGAL CONCLUSIONS

1. The burden of proof in this proceeding is on complainant. (Evid. Code § 500.) The parties agree that the applicable standard of proof is preponderance of the evidence. (Evid. Code, 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].)

2. Fish and Game Code section 7857, subdivision (b)(2), authorizes the Commission to suspend, revoke or cancel commercial fishing privileges for a period of time, for a violation of the Fish and Game Code or the regulations adopted thereunder, or a violation of the terms of the permit or entitlement, by any of the following persons: "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 and control."

3. Fish and Game Code section 12158.5 provides:

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 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.

First Cause for Discipline

4. Regulation section 630 prohibits fishing for commercial purposes in an ecological reserve. On May 11, 2015, Aliotti was convicted of two counts of violating this section for conduct committed while acting as an agent of respondent. (Findings 3, 5 & 6.) Respondent argues that it cannot be disciplined for this violation because Aliotti did not fish in an ecological reserve. (Finding 7.) A conviction based on a nolo contendere plea to a violation of the Fish and Game Code or the Department's regulations is a conviction pursuant to Fish and Game Code section 12158.5, and establishes the violation. As such, the conviction cannot be collaterally attacked in this administrative proceeding. (*Arneson v. Fox* (1980) 28 Cal.3d 440.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Second Cause for Discipline

5. Fish and Game Code section 2001, provides that it is unlawful "to take" a fish outside of an established season. Dungeness crabs fall within the definition of fish. (Fish & G. Code, § 45 [defining fish as "a wild . . . crustacean . . . or part, spawn, or ovum of any of those animals"].) The term "take" is defined as: "hunt, catch, capture or kill, to attempt to hunt, pursue, catch, capture or kill." (Fish & G. Code, § 86.) The Dungeness crab season pertaining to District 17 opens on November 15 and closes on June 30, as set forth in Fish and Game Code section 8276, subdivision (b):

Dungeness crab may be taken for commercial purposes in all other districts only between November 15 and June 30.

Respondent, through the actions of its agent Aliotti, left 122 crab traps in the ocean after the close of the 2014 season, and thereafter to July 19, 2014, captured a total of 732 Dungeness crabs in violation of section 2001. (Findings 3 & 8.)

Respondent argues that it cannot be cited for a violation of section 2001 because Aliotti did not take the crabs for “commercial purposes” within the meaning of Fish and Game Code section 8276, subdivision (b). The term “commercial purposes” is not defined in the Fish and Game Code. Respondent argues that the taking of the Dungeness crab could not be considered for commercial purposes because Aliotti did not intend to sell the crab he captured in respondent’s traps. An intent to make a profit from the Dungeness crab taken in the crab traps is not the key to finding commercial activity. The crab traps were in the water because of respondent’s commercial activity. The capture of the crabs after the close of the season was associated with that commercial activity. A violation of Fish and Game Code section 2001 was established. Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Third Cause for Discipline

6. Fish and Game Code section 9006 requires every trap used to take Dungeness crab be marked with a buoy that contains the commercial fishing license identification number of the trap operator. Between July 4 and 19, 2014, 33 of the buoys used by Aliotti were not marked with Aliotti’s commercial fishing license number in violation of this section. (Findings 3 & 13.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Fourth Cause for Discipline

7. Fish and Game Code section 9011, subdivision (a)(2), requires every Dungeness crab trap to have at least two rigid circular openings of not less than four and one-quarter inches, inside diameter, on the top or the side of the trap. Between July 4 and 19, 2014, one of the crab traps used by Aliotti lacked two such openings. (Findings 3 & 15.) Cause for disciplinary action exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Fifth Cause for Discipline

8. Subdivision (a) of section 132.1 of the regulations requires every Dungeness crab trap to have a valid Dungeness crab tag attached to it. The tag must contain the trap owner’s telephone number. If the tag is missing, or the information on the tag is illegible or incorrect, the trap is deemed out of compliance and cannot be used to take Dungeness crab for commercial purposes. (*Ibid.*) Between July 4 and 19, 2014, 13 of the crab traps used by respondent did not have a crab trap tag. (Findings 3 & 17.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Sixth Cause for Discipline

9. Section 132.1 of the regulations requires every Dungeness crab trap placed in the water for commercial purposes to be marked with a buoy. Each crab trap is required to have a biennial buoy tag affixed to the main buoy. (Subd. (b).) Between July 4 and 19, 2014, four of the crab traps used by Aliotti did not have a biennial buoy tag affixed to the main buoy. (Findings 3 & 18.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Seventh Cause for Discipline

10. Fish and Game Code section 8595, subdivision (b), provides that no species other than prawn shall be taken in a prawn trap. Any other species taken incidentally in a prawn trap "shall immediately be released." On April 18, 2018, Aliotti took and retained nine octopi he had captured in spot prawn traps. (Findings 3, 24 & 25.) Cause for disciplinary action exists against respondent pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Ninth Cause for Discipline

11. Fish and Game Code section 7850, subdivision (a), requires a commercial license in order to use, operate or assist in the operation of a boat or trap to take any fish for commercial purposes, or to bring ashore any fish for the purpose of selling them in a fresh state or to contribute materially to the activities on board any commercial fishing vessel. On April 18, 2018, Petty, who was acting as an employee of respondent, and as a person under respondent's direction and control, failed to hold a valid commercial license when working on the Ocean Warrior, and performing the duties for which a commercial license was required under this section. (Findings 19-21.) Cause for disciplinary action exists against respondent pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Tenth Cause for Discipline

12. Fish and Game Code section 9001, subdivision (b), requires a general trap permit in order to operate or assist in the operation of any trap to take mollusks or crustaceans on any commercial vessel when any trap is aboard. On April 18, 2018, Petty, who was acting as an employee of respondent, and as a person under respondent's control, failed to hold a valid general trap permit when working on the Ocean Warrior, and performing the duties for which a general trap permit was required under this section. (Findings 19-21.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Eleventh Cause for Discipline

13. Fish and Game Code section 7850, subdivision (b), provides that any nonlicensed person on board a commercial vessel must "register his or her presence on board the commercial fishing vessel in a log maintained by the owner or operator of the vessel in

accordance with the requirements of the department.” Mercurio’s presence on the Ocean Warrior on April 18, 2018, was not registered in a log maintained by Aliotti as operator of the vessel in violation of this section. (Findings 3, 19, 22 & 23.) Cause for disciplinary action against respondent exists pursuant to Fish and Game Code section 7857, subdivision (b)(2).

Disciplinary Considerations

14. In July 2014, respondent took 732 Dungeness crabs after the close of the crab season; had 33 crab trap buoys that lacked Aliotti’s commercial fishing license number; had 13 crab traps without crab trap tags; had four crab traps without biennial buoy tags affixed to the main buoy; and one crab trap whose openings were blocked. The violations range in their seriousness, but there are many of them. According to the wardens, in their experience, many of these violations are unusual.

In April 2018, Aliotti violated the fishery laws again by not releasing nine octopi caught in his spot prawn traps. Respondent’s employee Petty was permitted to work without a valid commercial fishing license or a valid prawn trap permit. Petty was convicted of two misdemeanors as a result of this incident. Respondent’s employee Mercurio lied to the warden and presented a phony observation log. Aliotti did nothing to correct Mercurio in this interaction with the Warden.

Complainant seeks a one-year suspension of respondent’s spot prawn permit arguing that the violations show a pattern of conduct that threatens marine fishery resources. And in aggravation, the April 2018 violations occurred while Aliotti was on criminal probation for his May 2015 convictions, when he had been ordered by the court to obey all laws and regulations of the Department. Respondent argues that a one-year suspension is too drastic a penalty in light of the types of violations committed. All things considered, complainant has presented sufficient evidence to support the imposition of a one-year suspension of respondent’s spot prawn permit.

ORDER

Tier 1 Spot Prawn Trap Vessel Permit No. SP10016 issued to respondent Alecia Dawn, Inc., is suspended for the period of one year.

DATED: January 15, 2019

DocuSigned by:

Melissa G. Crowell

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MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings