

STAFF SUMMARY FOR AUG 7-8, 2019

EXECUTIVE SESSION**Today's Item****Information** ☐**Action** ☒

Executive session will include four standing topics:

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

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

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

(A) Pending litigation to which FGC is a party

See agenda for a complete list of pending civil litigation to which FGC is a party.

(B) Possible litigation involving FGC

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

(C) Staffing

Per FGC direction, FGC staff posted an invitation for applications to fill the vacant executive director position, with an application deadline of Aug 14 and interviews scheduled for Aug 28 in Sacramento (Exhibit C1). A special meeting of FGC is proposed for Sep 3 to potentially select a final executive director candidate.

FGC's deputy executive director is fulfilling the role of acting executive director, consistent with the deputy executive director's duty statement, in an out-of-class assignment that began in Sep 2018; the assignment has been extended and approved every 60 days by the California Department of Human Resources (CalHR) for a total assignment time of not more than one year (ending Sep 17, 2019).

Beginning in Feb 2019, the deputy executive director duties have been fulfilled by FGC's marine advisor through an out-of-class assignment. To ensure full support for FGC's Marine Resources Committee, a DFW environmental scientist is on loan to FGC through an out-of-class assignment as FGC's marine advisor, effective Feb 2019. The deputy executive director and marine advisor assignments must be approved for extension every 90 days by CalHR and can continue for a total assignment of not more than one year.

STAFF SUMMARY FOR AUG 7-8, 2019

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

- I. Consider Agency Case No. 18ALJ11-FGC, the appeal filed by Louis Ferrari regarding the transferability of a nearshore fisheries permit. Mr. Ferrari is appealing a DFW letter to Mr. Ferrari where it declines to revisit a 2003 decision. In so doing, Mr. Ferrari is attempting to appeal a DFW decision regarding initial issuance of his non-transferable north-central coast region nearshore fisheries permit (exhibits D1 and D2), a decision for which the right to appeal lapsed in 2004. This appeal was originally scheduled for consideration in Apr 2019, but Mr. Ferrari requested FGC delay taking action to allow him to speak at a future meeting, now scheduled at this Aug 2019 FGC meeting (Exhibit D3).
- II. Consider Agency Case No. 19ALJ03-FGC, the appeal filed by Warren Wayland regarding DFW's denial of a request to renew a salmon vessel permit. Mr. Wayland filed an appeal regarding the permit as the court-appointed executor of the estate of Fred Harmon (Exhibit D4). DFW has responded stating that DFW does not object to the requested renewal (Exhibit D5). Note that even if the appeal is granted, pending fees are statutorily mandated.

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

- (D) **FGC staff:** Deny the appeal filed by Mr. Ferrari as untimely. Grant the appeal filed by Mr. Wayland.

Exhibits

- C1. [Flyer inviting applications for FGC executive director](#)
- D1. [Letter from Louis Ferrari to FGC](#), received Jan 18, 2018
- D2. [Email from David Kiene to Michael Yaun](#), received Oct 10, 2018
- D3. [Email from Louis Ferrari to FGC](#), received Apr 5, 2019
- D4. [Email from Courtney Graham to FGC](#), received Feb 13, 2019
- D5. [Email from David Kiene to Michael Yaun](#), received Apr 26, 2019

Motion/Direction

- (D) Moved by _____ and seconded by _____ that the Commission denies the appeal by Louis Ferrari regarding the transferability of a nearshore fisheries permit as untimely.

AND

Moved by _____ and seconded by _____ that the Commission grants the appeal by Warren Wayland regarding the Department's denial of a request to renew a salmon vessel permit.



The California Fish and Game Commission
invites applications for

EXECUTIVE DIRECTOR

Exempt Appointment – Non-tenured, full-time

Location: Sacramento, California

Job Code#: JC-164289

Position #: 565-001-0771-401

Classification: Executive Director, Fish and Game Commission/Department of Fish and Game

Monthly Salary: \$10,733.00 - \$11,958.00

Final Filing Date: August 14, 2019

Interviews: August 28, 2019 in Sacramento

The California Fish and Game Commission (Commission) is looking for a talented and exceptional executive director to take the helm of a high performing team to support and carry out the mission of the Commission. The position requires a dynamic leader with demonstrated executive-level experience. The position offers unique opportunities and challenges in one of the most beautiful states in the union, while working with a diverse and growing population. Based in the state capitol of Sacramento, the Commission is family-friendly and situated in close proximity to the Napa Valley, San Francisco, Lake Tahoe and other desirable destinations.

California Fish and Game Commission

Established in 1870, the Commission is composed of five members appointed by the Governor and confirmed by the California State Senate. The Commission has a small staff, including the executive director, a deputy executive director, a program manager, two science advisors, and administrative and analytical support personnel. The Commission conducts public meetings throughout the State to, among other things, promulgate regulations for sport fishing and hunting, many commercial fisheries, and designating protected areas; makes listing and delisting determinations for the state's rare, threatened or endangered species under the California Endangered Species Act; sets policy for the California Department of Fish and Wildlife; acts in a semi-judicial role for appeals and accusations; and leases state water bottoms for aquaculture and kelp beds for harvesting.

For more information about the Commission, please visit www.fgc.ca.gov.

Position Description and Duties

The Executive Director is the executive officer for the Commission. This position is exempt: appointment to and service in the position is at the pleasure of the Commission.

Under the general direction of the California Fish and Game Commission, the executive director actively supports and implements a shared vision that emphasizes (1) a healthy, biodiverse and natural California in which native fish and wildlife thrive; and (2) a rich and sustainable outdoor heritage that inspires recreation and enjoyment for all generations.

The executive director oversees and guides the work of a multi-disciplinary team of professional and administrative staff; provides direction to staff for administering a critical, statewide regulatory program and quasi-judicial proceedings; maintains collaborative working relationships with government agencies and stakeholders; maximizes opportunities to educate the public and stakeholders about commission actions; advises the commission on legislation, public policy, meeting its statutory responsibilities, and achieving strategic goals; represents the Commission in negotiations; and provides general oversight for commission operational decisions.

You will find additional information about the job in the [Duty Statement](#).

Desirable Qualifications

In addition to evaluating each candidate's relative ability, as demonstrated by quality and breadth of experience, the following factors will provide the basis for competitively evaluating each candidate:

- Exhibits a high degree of integrity and ethical behavior by modeling values-based behaviors
- Acts with independence, open-mindedness, flexibility, trust and tact
- Progressive experience with executive-level leadership, management and problem-solving, especially past success in working for a board or commission on complex issues
- Experience establishing, promoting and maintaining cooperative working relationships with representatives of all levels of government, the public, and special interest groups
- Experience in identifying, prioritizing and implementing objectives to achieve stated goals
- Experience in planning, organizing, and directing the work of multidisciplinary professional and administrative staff
- Exhibits strong interpersonal and mentoring skills, including promoting a high-performance culture where employees are motivated and enabled to perform to their greatest potential
- Promotes internal and external teamwork and cross-functional collaboration and communication in support of an organization's mission and goals
- Experience with public speaking before large groups and group communication techniques
- Knowledge of the commission and state fish and wildlife programs and policies, and California state government, including the organization and practices of the legislature and executive branch
- Administrative experience with government operations and processes, including legislation, regulations, budgeting, personnel, and equal employment opportunity
- Obtained a baccalaureate or advanced degree in public administration, environmental policy, environmental science, natural science, wildlife or fisheries management, or related field

Special Requirements

Special Personal Characteristics

A thorough commitment to the Commission's mission and vision and core values, strong knowledge concerning leadership and management principles to motivate others to define and solve problems, excellent oral and written communication skills, the highest level of integrity as well as tact and discretion with sensitive and confidential issues, ability to work well on a small team, a judicial temperament, ability to adapt to a continually-evolving environment and thrive in a timeline-driven setting, dependable, and self-motivated.

Working Conditions

Conflict of Interest Code and Statement of Economic Interests Filing

This position is subject to Title 14, Section 782.1, of the California Code of Regulations, the Commission's Conflict of Interest Code regulations. The Political Reform Act requires employees who serve in this position to submit a Statement of Economic Interests (Form 700) within 30 days of assuming office, annually by April 1, and within 30 days of leaving office. These statements are publicly accessible documents.

Application Instructions

Completed applications and all required documents must be received or postmarked by the final filing date in order to be considered. Dates printed on mobile bar codes, such as the Quick Response (QR) Codes available at USPS, are not considered postmark dates for the purpose of determining timely filing of an application.

Final Filing Date: August 14, 2019

Who May Apply

This is a non-testing classification; therefore, individuals who are eligible to be appointed to this exempt position by the State of California may apply. Individuals in specific programs, such as the Welfare to Work Program, are encouraged to apply and will be given priority according to the applicable laws and rules. Please note on your application your current participation in these programs.

Applications will be screened and only the most qualified applicants will be selected to move forward in the selection process.

Applicants must meet the minimum qualifications stated in the classification specification(s).

How to Apply

Complete application packages (including your Examination/Employment Application (STD 678) and applicable or required documents) must be submitted to apply for this job. Application packages may be submitted electronically through your CalCareers Account at www.CalCareers.ca.gov. When submitting your application in hard copy, a completed copy of

the application package listing must be included. If you choose to not apply electronically, a hard copy application package may be submitted through an alternative method listed below. If you submit your application electronically, you must provide a print copy of the STD 678 with an original signature using one of the two alternative methods listed below.

Address for Mailing Application Packages

California Department of Fish and Wildlife
Attn: Carolyn Rendon
P.O. Box 944209
Sacramento, CA 94244

Address for Drop-Off Application Packages

Carolyn Rendon
California Department of Fish and Wildlife
1416 Ninth Street, Room 1217-B
Sacramento, CA 95814
Weekdays, 8:00 AM - 4:30 PM

What to Include

The following items are required to be submitted with your application. Applicants who do not submit the required items timely may not be considered for this job.

- Current version of the State Examination/Employment Application Form (STD Form 678), when not applying electronically, or the Electronic State Employment Application through your applicant account at www.CalCareers.ca.gov. All experience and education relating to the minimum qualifications listed on the classification specification should be included to demonstrate how you meet the minimum qualifications for the position.
- Resume or CV is required and must be included.
- Statement of qualifications – A statement of qualifications of no more than two pages describing how your experience and education satisfy the desired qualifications.
- Two letters of professional recommendation.

Applications must be *received by* August 14, 2019. Interviews will be held on August 28, 2019 in Sacramento.

Reasonable Accommodation

Applicants requiring reasonable accommodations for the hiring interview process must request the necessary accommodations if scheduled for a hiring interview. The request should be made at the time of contact to schedule the interview. Questions regarding reasonable accommodations may be directed to the EEO contact listed on this job posting.

Contact Information

The hiring unit contact is available to answer questions regarding the position or application process.

Department Website: www.fgc.ca.gov

Hiring Unit Contact:

David Thesell
California Fish and Game Commission
(916) 654-9903
David.Thesell@fgc.ca.gov

Please direct requests for reasonable accommodations to the interview scheduler at the time the interview is being scheduled. You may direct any additional questions regarding reasonable accommodations or equal employment opportunity for this position to the California Department of Fish and Wildlife's EEO Office:

EEO Office
(916) 653-9089
EEO@wildlife.ca.gov

California Relay Service: 1-800-735-2929 (TTY), 1-800-735-2922 (Voice) TTY is a telecommunications device for the deaf, and is reachable only from phones equipped with a TTY Device.

Equal Opportunity Employer

The State of California is an equal opportunity employer to all, regardless of age, ancestry, color, disability (mental and physical), exercising the right to family care and medical leave, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, political affiliation, race, religious creed, sex (includes pregnancy, childbirth, breastfeeding and related medical conditions), and sexual orientation.

It is an objective of the State of California to achieve a drug-free workplace. Any applicant for state employment will be expected to behave in accordance with this objective because the use of illegal drugs is inconsistent with the law of the State, the rules governing civil service, and the special trust placed in public servants.

To: Fish & Game Commission

January 8, 2018

P. O. Box 944209

Sacramento, CA 94244-2090

From: Louis J. Ferrari

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
2018 JAN 18 PM 2:05

Subject: Request to have my Non-Transferable North-Central Nearshore Fisheries Permit converted to a Transferable North-Central Nearshore Fisheries Permit.

Background and Justification:

I previously submitted this request to the Department of Fish and Wildlife, hoping the Department would be able to correct the mistake they made when they originally issued me a Nearshore Permit. The Department has declined to do so and referred me to the Fish & Game Commission. I am hereby exercising my right to appeal to the Commission the Department's decision to not correct this error.

Prior to Nearshore Fisheries becoming limited entry I had commercially fished for and landed thousands of pounds of Nearshore fish. The problem is that during the Nearshore Fisheries Permit qualification period 1994 to 2001 the Commercial Fish Buyers were not required by law to separate nearshore fish species from other rockfish species and therefore just put on the Landing Receipt all nearshore fish that they were paying the same price for, as "Bolina" rockfish. The same thing happened with my many pounds of Cabazon landings. All Cabazon were thrown in with and recorded as Lingcod. Bolina (brown) Rockfish and Lingcod were not listed as Nearshore Species, so when I applied for my initial Nearshore Fishery Permit, I was denied because the Department of Fish & Game Commercial Fish Landing data did not show that I had landed at least 500

pounds of nearshore fish pursuant to CCR Title 14 Section 150(d)(2)(A). I appealed the denial and was again told the Department did not have landing data to show that I would have enough qualified landings for a Transferable Nearshore Fishery Permit. I was however, issued a Non-Transferable Nearshore Fishery Permit pursuant to CCR Title 14 Section 150(e)(2)(B).

Even though I felt at the time that I was unjustly being denied a Transferable Nearshore Fishery Permit, there was nothing I could do about it, because all I had were Landing Receipts that only showed Bolina Rockfish and Lingcod. The reason for my request now to change my Non-transferable Nearshore Fishery Permit to a Transferable Nearshore Fishery Permit is that it has come to my attention the Department did, at the time of my permit denial, possess data that would have shown that I had sufficient landings of qualifying Nearshore Species during the qualification period of 1994-2001. This data was not available to me at the time and evidently was not available to the persons who were reviewing my permit application and appeal. Knowing that many different species of rockfish were being grouped on landing receipts as Unspecified Rockfish, Bolina Rockfish, Red Rockfish, and Gopher Rockfish, Department biologists did a census of what percentage of individual species of rockfish were being landed under one of the above groups. For instance in 1994, fish being recorded on Landing Receipts as Bolina rockfish actually included: Blue rockfish, Black rockfish, Brown rockfish, Black-and-Yellow rockfish, Cabezon, China rockfish, Copper rockfish, Gopher rockfish, Grass rockfish and Quillback rockfish. Based on Department of Fish & Wildlife data and the percentage of nearshore fish landed as Bolina rockfish on Landing Receipts I had 3,353 pounds of Nearshore fish (not including cabezon landed as lingcod) landed in 1994, 1,490 pounds of Nearshore fish in 1995 and 921 pounds in 1996. All this information is currently available to Department Personnel in the Commercial Fisheries Data Base.

If Department personnel who were reviewing permit qualifications had access to this information at the time, then I would have easily qualified for a Transferable Nearshore Fishery Permit. Therefore, I respectfully request this error be corrected by converting my Non-Transferable North-Central Nearshore Fishery Permit to a Transferable Nearshore Fishery Permit.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis J. Ferrari". The signature is fluid and cursive, with the first name "Louis" and last name "Ferrari" clearly distinguishable.

Louis J. Ferrari



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
FISH AND GAME
COMMISSION



2017 JUN 30 AM 9:30

Certified Mail

October 6, 2016

Mr. Louis J. Ferrari

**SUBJECT: NOTICE OF DENIAL TO CONSIDER APPEAL FOR A TRANSFERABLE
NORTH CENTRAL COAST REGION NEARSHORE FISHERY PERMIT**

Dear Mr. Ferrari:

This letter is in response to your July 1, 2016 letter to the Department of Fish and Wildlife (Department) in which you asked the Department to convert your Non-Transferable North-Central Coast Region Nearshore Fisheries Permit (NTNCCRNFP) to a Transferable North-Central Region Nearshore Fisheries Permit (TNCCRNFP).

California Code of Regulations, Title 14, section 150, subdivision (m)(1) (Section 150(m)(1)) states:

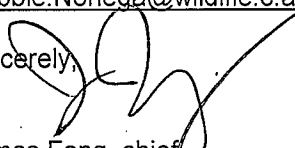
Any applicant who is denied initial issuance of a Nearshore Fishery Permit for any reason may appeal to the department in writing describing the basis for the appeal. The appeal shall be received or, if mailed, postmarked, no later than March 31, 2004. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's denial.

On May 7, 2003, Mr. Zeke Grader, with the Pacific Coast Federation of Fishermen's Associations, submitted to the Department on your behalf an appeal of the Department's denial of your request to receive a TNCCRNFP. The Department denied your appeal on June 11, 2003.

Pursuant to Section 150(m)(1), you were required to appeal the Department's appellate decision to the Fish and Game Commission (Commission) within 60 days of the Department's decision. While the 60 day period lapsed in 2004, you should nonetheless submit your appeal request to the Fish and Game Commission at California Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090, or by e-mail at fgc@fgc.ca.gov.

If you have any questions or require further assistance, please contact Ms. Debbie Noriega, of my staff, at the letterhead address, by telephone at (916) 928-5817, or e-mail Debbie.Noriega@wildlife.ca.gov.

Sincerely,


James Fong, chief
License and Revenue Branch

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

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

Conserving California's Wildlife Since 1870

From: Kiene, David@Wildlife
Sent: Wednesday, October 10, 2018 1:16 PM
To: Yaun, Michael@FGC; [REDACTED]@FGC.com
Subject: RE: Ferrari appeal, 18ALJ11-FGC

Dear Mr. Yaun:

This e-mail is in response to Mr. Ferrari's appeal to the Fish and Game Commission ("Commission"), challenging the Department of Fish and Wildlife's ("Department") determination that it would not consider his appeal to redesignate his Non-Transferable North-Central Coast Nearshore Fishery Permit ("Permit") as transferable. As explained below, the Department of Fish and Wildlife ("Department") objects to this request.

Background

The deadline for requesting an appeal is described in Title 14, section 150(m)(1), which states:

Any applicant who is denied initial issuance of a Nearshore Fishery Permit for any reason may appeal to the department in writing describing the basis for the appeal. The appeal shall be received or, if mailed, postmarked, no later than March 31, 2004. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's denial.

Sometime in 2003, the Department denied Mr. Ferrari's request to receive a Nearshore Fishery Permit. On May 7, 2003, Zeke Grader, on behalf of Mr. Ferrari, appealed this denial to the Department. As a result, the Department reversed its earlier denial and sent two letters dated June 11, 2003, to Mr. Ferrari, one stating that the Department would issue a Non-Transferable North-Central Coast Nearshore Fishery Permit, and the other denying the issuance of a Transferable North-Central Coast Nearshore Fishery Permit. Mr. Ferrari could have appealed his Permit's designation as non-transferable to the Commission within 60 days of the date of those letters, but did not do so. (All 2003 correspondence in the Department's possession is attached.)

Over 13 years later, on July 1, 2016, Mr. Ferrari appealed the Department's designation of the Permit as non-transferable. The Department determined that the appeal request was late and sent a letter to Mr. Ferrari on October 6, 2016, stating that it would not consider his appeal. Mr. Ferrari finally submitted an appeal to the Commission on January 8, 2018, over a year after the date of the Department's October 6, 2016 letter, and over 14 years after the Department's June 11, 2013 letter, notifying him of his Permit's non-transferable designation.

Discussion

The deadline to appeal the Permit's designation as Non-Transferable to the Department was March 31, 2004, and the deadline to appeal to the Commission was within 60 days of the Department's denial. (Section 150(m)(1).) Thus, the deadlines for appealing the Permit's designation passed over a decade ago, and neither the Department nor the Commission has authority to consider these very late appeals. While Mr. Ferrari claims there is new landing information supporting his appeal, Section 150 provides no authority to waive the appeal deadlines.

Because Mr. Ferrari's appeal to the Commission is over 14 years late, the Department is respectfully requesting that the Commission not consider Mr. Ferrari's appeal. If you have any further questions, please do not hesitate to contact me.

From: Yaun, Michael@FGC

Sent: Friday, September 21, 2018 4:38 PM

To: [REDACTED]@com; Kiene, David@Wildlife <David.Kiene@wildlife.ca.gov>

Subject: Ferrari appeal, 18ALJ11-FGC

Mr. Ferrari and Mr. Kiene,

As legal counsel for the California Fish and Game Commission, I am attempting to process the appeal that Mr. Ferrari filed with the Commission in response to the notice of denial from the Department of Fish and Wildlife (Mr. Kiene's client).

I will be forwarding this matter to the Office of Administrative Hearings for the conduct of a hearing in Oakland and entry of a proposed decision for the Commission's subsequent consideration. Attached is a brochure with some general background information about OAH.

Please respond to this email with the following:

1. Dates of unavailability from each of you over the next 6 months.
2. Your estimation of the duration of the hearing, and
3. Confirmation that you or your client consent to audio recording of the hearing.

No need for a hearing

If you would like to discuss the possibility of agreeing to a joint stipulation or settlement, please do so between yourselves. If some agreement appears likely, please let me know so that I may avoid referring the matter to OAH for a hearing. Alternately, if the Department does not object to Mr. Ferrari's appeal and does not feel a need to participate in the proceeding, please respond stating that is the case.

Mike Yaun
Legal Counsel
Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento CA 95814

(916) 653-9719

Yaun, Michael@FGC

From: Lou Ferrari
Sent: Friday, April 5, 2019 12:21 PM
To: FGC
Cc: Yaun, Michael@FGC
Subject: Change of date request for Case No. 18ALJ11-FGC Louis Ferrari

I, Louis Ferrari, would like to request a change of date and venue for my appeal regarding the transferability of my nearshore fisheries permit. I wish to attend the Commission Meeting and speak on my behalf prior to the Executive Session, however because of recent health issues I will not be able to attend the April 17 Commission Meeting in Santa Monica. I would wish for you to please change my Case to the June 12-13 Commission Meeting in Redding. Please let me know if this may be accommodated. If the June Meeting does not work I would also be able to make the August 7-8 meeting in Sacramento.

Louis Ferrari

From: Zerlang Zerlang <zandzmarine@gmail.com>

Sent: Wednesday, February 13, 2019 09:38 AM

To: FGC

Subject: APPEAL TO DEPARTMENT

Good morning,

Please see attached appeal regarding the permit on F/V FLAGSHIP. Thank you in advance for your time.

--

Courtney Graham
Zerlang & Zerlang Marine Services
1493 Fay Ave
Samoa, CA 95564
Office: (707) 443 5180



HAYASHI | WAYLAND

State of California
Department of Fish & Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

RE: APPEAL TO DEPARTMENT
F/V FLAGSHIP
O.N. 282243
F&G Number FG12347
SVP Number SAO411

Greetings,

As the court appointed executor of the estate of Fred Harmon, I would like to appeal the decision to deny the reinstatement of the salmon permit SAO411 for the FLAGSHIP FG12347 that we received by certified mail on January 25, 2019.

Please inform us of what we need to do to proceed.

Thank you,

F. Warren Wayland
Court Appointed Executor of Fred Harmon





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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Certified Mail

January 25, 2019

Mr. F. Warren Wayland
1188 Padre Dr. Ste.101
Salinas, CA 93901

**Subject: NOTICE OF DENIAL FOR REINSTATEMENT OF SALMON VESSEL
PERMIT, PERMIT NUMBER SA0411**

Dear Mr. Wayland:

This is in response to your request to reinstate the Salmon Vessel Permit (SVP), Permit Number SA0411, for the *F/V Flagship* (FG12347).

Authority-Salmon Vessel Permit

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

Authority-Late Renewal Applications

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

FGC Section 7852.2(b) states the Department shall not waive the applicable late fee. Additionally, 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 dated December 18, 2018, you are requesting reinstatement of the SVP for the *F/V Flagship*. You explain that in 1960, Edward and Fred Harmon had the *F/V Flagship* built and successfully fished for salmon until Fred Harmon's health failed in 2016. It was Fred Harmon's full intention to return to fishing. You state that the *F/V Flagship* is a proven commercial salmon vessel and would be a shame for her career to come to an end due to the declining health of Fred Harmon.

Documentation Submitted

- Letter from F. Warren Wayland, Court-appointed Executor of the Estate of Fred Harmon, received December 19, 2018.
- Copy of the Superior Court of California, County of Monterey, Testamentary, dated October 11, 2018, showing Warren Wayland is the executor of the estate of Fred L. Harmon.
- Copy of Mr. Fred L. Harmon's Certificate of Death, which shows the date of death as April 9, 2018.
- Copy of Mr. Edward F. Harmon's Certificate of Death, which shows the date of death as October 23, 2003.

Department Findings

Department license records show that the *F/V Flagship* held a valid 2016-2017 SVP, which made you eligible to renew the permit for the 2017-2018 permit year.

Department's Determination

Based on the previously stated information, your request to reinstate the SVP for the *F/V Flagship* is denied, because the *F/V Flagship* last held a valid SVP in the 2016-2017 permit year. The Department received the request to renew the SVP on December 19, 2018. FCG Section 7852.2(c) requires the Department to deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must either mail a written request to the Fish and Game Commission ("Commission") at P.O. Box 944209, Sacramento, CA 94244-2090, or 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 SVP. If the Commission grants the 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 \$2,434.63 would be due. A fee schedule is enclosed.

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

Sincerely,



Joshua Morgan, Chief
License and Revenue Branch

From: Kiene, David@Wildlife <David.Kiene@wildlife.ca.gov>
Sent: Friday, April 26, 2019 4:36 PM
To: Yaun, Michael@FGC <Michael.Yaun@fgc.ca.gov>; warrenw@hw-cpa.com
Cc: zandzmarine@gmail.com; FGC <FGC@fgc.ca.gov>
Subject: RE: Agency case no. 19ALJ03-FGC Wayland

Dear Mr. Yaun and Mr. Wayland:

Attached is a letter stating the Department's non-opposition to the renewal of the Salmon Vessel Permit.

Please let me know if you have any questions.

From: Yaun, Michael@FGC <Michael.Yaun@fgc.ca.gov>
Sent: Wednesday, April 3, 2019 1:59 PM
To: warrenw@hw-cpa.com; Kiene, David@Wildlife <David.Kiene@wildlife.ca.gov>
Cc: zandzmarine@gmail.com
Subject: Agency case no. 19ALJ03-FGC Wayland

Mr. Wayland and Mr. Kiene,

I am attempting to process the appeal filed with the California Fish and Game Commission, which was in response to a notice from the California Department of Fish and Wildlife (Mr. Kiene's client). Both the appeal and the notice are attached for reference.

Assuming the appeal is within the jurisdiction of the Commission, the appeal will be forwarded to the Office of Administrative Hearings (OAH) for the conduct of a hearing. OAH would conduct the hearing in its office location that is most convenient for appellant; OAH maintains offices in Sacramento, Oakland, Los Angeles, and San Diego. After OAH concludes a hearing, OAH would enter a proposed decision for the Commission's subsequent consideration. Attached is a brochure with some general background information about OAH.

Prior to forwarding the appeal to OAH, Commission staff needs additional information from the parties.

Please respond to this email with the following:

1. Dates of unavailability from each of you over the next 6 months.
2. Your estimation of the duration of the hearing,
3. Confirmation that you or your client consent to audio recording of the hearing, and
4. Mr. Wayland, I also need confirmation about the email address you prefer and whether you are ok with email being the primary method of communication.

No need for a hearing

If you would like to discuss the possibility of agreeing to a joint stipulation or settlement, please do so between yourselves. If some agreement appears likely, please let me know so that I may avoid referring the matter to OAH for a hearing. Alternately, if the Department does not object to this appeal and does not feel a need to participate in the proceeding, please respond stating that is the case.

If either the parties reach an agreement as to the outcome or the Department affirmatively declines to participate in the proceeding, Commission staff will not refer the matter to OAH and instead will ask the Commission to consider the matter at the next available Commission meeting.

Response and questions

Please provide your responses or direct any questions to me. However, note that since I am legal counsel for the Commission, I cannot discuss the merits of the appeal with either party alone.

Mike Yaun
Legal Counsel
Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento CA 95814

(916) 653-9719



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



April 26, 2019

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

Re: *In the Matter of Fred Harmon*

Dear Commissioners:

This letter is in response to F. Warren Wayland's, Executor of Fred Harmon's estate ("Estate"), request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew Mr. Harmon's Salmon Vessel Permit, #SA0411 ("SVP"). Mr. Harmon's SVP was last valid during the 2016-17 fishing year. Mr. Wayland recently submitted an appeal request to the Commission. The Department will not be participating in this appeal and accordingly, does not object to the renewal of the SVP for the 2019-2020 fishing year, provided that the Estate or its designee pays all applicable fees.

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

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

To emphasize that these fees must be paid, Section 7852.2, subdivision (b) states that "The department shall not waive the applicable late fee," while subdivision (d) states "If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." The fees total **\$2,434.63** and are described in the attached fee statement.

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

Sincerely,

A handwritten signature in dark ink, appearing to be 'DK' with a stylized flourish.

DAVID KIENE
Senior Staff Counsel

Cc: F. Warren Wayland



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Mr. F. Warren Wayland
Fees Required for Reinstatement for a
Salmon Vessel Permit (SVP)
Permit Number SA0411
F/V *Flagship* (FG12347)

Prior Year Fees	Permit Fees
2017-2018 Commercial Boat Registration	\$ 357.00
SVP	\$ 43.00
Late Fee (61 days to March 31, 2018)	\$ <u>590.50</u>
2018-2019 Commercial Boat Registration	\$ 367.25
SVP	\$ 44.29
Late Fee (61 days to March 31, 2019)	\$ <u>607.75</u>
Prior Year Fees Due	\$ 2,009.79

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

Current Year Fees	
2019-2020 Commercial Boat Registration	\$ 379.00
SVP	\$ <u>45.84</u>
Total Current Fees Due	\$ 424.84
Total Fees Due	\$ 2,434.63

If the Fish and Game Commission should recommend approval, full payment of \$2,434.63 would be due.