

## STAFF SUMMARY FOR DEC 11-12, 2019

**EXECUTIVE SESSION**

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

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

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

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

**(A) Pending litigation to which FGC is a party**

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

**(B) Possible litigation involving FGC**

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

**(C) Staffing**

For other details about staffing, see the executive director's report under Agenda Item 10(A) for today's meeting.

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

- I. *Ferrari nearshore fishery permit appeal:* Consider Agency Case No. 18ALJ11-FGC, the appeal filed by Louis Ferrari regarding the transferability of a nearshore fisheries permit. In 2003, DFW issued a Non-Transferable North-Central Coast Nearshore Fishery Permit to Mr. Ferrari in response to Mr. Ferrari's 2003 request for a transferable version of the permit. Mr. Ferrari had 60 days to appeal the non-transferable permit designation to FGC.

In Oct 2016, DFW provided Mr. Ferrari a letter responding to his Jul 2016 request to convert his non-transferable permit to a transferable permit (Exhibit D1). In its letter, DFW declined to revisit the 2003 decision due to its untimely submittal. In Jan 2018, Mr. Ferrari filed an appeal with FGC (Exhibit D2) based on the 2016 DFW letter. In Oct 2018, DFW submitted an objection about the timing of the appeal after the appeal deadline (Exhibit D3). This appeal was originally scheduled for consideration in Apr 2019 and then rescheduled for Aug 2019; in both instances the appeal was continued at the request of Mr. Ferrari.

## STAFF SUMMARY FOR DEC 11-12, 2019

- II. *Nguyen salmon appeal*: Consider the Proposed Decision in Agency Case No. 18ALJ04-FGC, the appeal filed by Meo Nguyen regarding DFW's denial of a request to transfer a salmon vessel permit. On Mar 6, 2018, DFW provided Meo Nguyen notice that DFW was not accepting an application to transfer a salmon permit (Exhibit D4). Fish and Game Code Section 8246.6 allows a person to contest a denial of a salmon permit transfer within 60 days of the DFW decision; this 60-day limit expired on May 5, 2018. On Jun 11, 2018, Mr. Nguyen submitted an untimely appeal to FGC (Exhibit D5). At the Aug 2018 meeting, FGC accepted the appeal and referred the matter to the Office of Administrative Hearings to consider the matter and provide a proposed decision. FGC received a copy of a proposed decision on Oct 31, 2019 (Exhibit D6).

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

- (D) **FGC staff**: Deny the appeal filed by Mr. Ferarri as untimely. Adopt the proposed decision regarding the appeal by Mr. Nguyen.

**Exhibits**

- D1. [Letter from DFW to Louis Ferrari, dated Oct 6, 2016](#)
- D2. [Letter from Louis Ferrari to FGC, received Jan 18, 2018](#)
- D3. [Email from David Kiene to Michael Yaun, received Oct 10, 2018](#)
- D4. [Letter from DFW to Meo Nguyen, dated Mar 6, 2018](#)
- D5. [Email from Meo Nguyen to FGC, received Jun 11, 2018](#)
- D6. [Proposed Decision in Case No. 18ALJ04-FGC, dated Oct 29, 2019](#)

**Motion/Direction**

- (D) Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission denies the appeal by Mr. Ferarri regarding the transferability of a nearshore fisheries permit as untimely.

**AND**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the proposed decision regarding the appeal by Mr. Nguyen of the California Department of Fish and Wildlife's nonacceptance of a salmon vessel permit transfer application.



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

██████████, California 94904

**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:

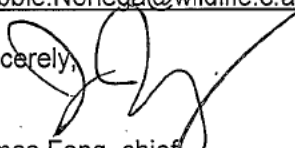
Any applicant who is denied initial issuance of a Nearshore Fishery Permit for any reason may appeal to the department in writing describing the basis for the appeal. The appeal shall be received or, if mailed, postmarked, no later than March 31, 2004. The appeal shall be reviewed and decided by the 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](mailto: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](mailto: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*

**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

**From:** [Kiene, David@Wildlife](mailto:Kiene, David@Wildlife)

**Sent:** Wednesday, October 10, 2018 1:16 PM

**To:** [Yaun, Michael@FGC](mailto:Yaun, Michael@FGC); [REDACTED]

**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]; Kiene, David@Wildlife <[David.Kiene@wildlife.ca.gov](mailto: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





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**

March 6, 2018

Mr. Meo Nauven

Sherman Oaks, CA

Subject: **NOTICE OF NONACCEPTANCE OF APPLICATION TO TRANSFER SALMON VESSEL PERMIT, PERMIT SA0875**

Dear Mr. Nguyen:

This letter is in response to your application to transfer Salmon Vessel Permit (SVP), from the *FV Miss Jacinda* (FG31827) to the *FV Shark Bait* (FG70651).

**Authority**

Fish and Game Code (FGC) Section 8239.1 states that the department shall accept a transfer application within one year after the date that a permitted vessel was lost, stolen, or destroyed, notwithstanding any inability to physically examine the permitted vessel to determine its salmon fishing potential. Only the permittee at the time of the loss, theft, or destruction of the vessel may apply for the transfer of the vessel permit. Proof that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard or any other law enforcement agency or fire department investigating the loss. The owner or the owner's agent may request an extension of time to complete a transfer for a period of six months. The Department of Fish and Wildlife ("Department") may grant further extensions not to exceed a total time period of five years after the date the permitted vessel was lost, stolen, or destroyed, if the permit fees are paid annually.

FGC Section 7881(d) states if a registered vessel is lost, destroyed, or sold, the owner of the vessel shall immediately report the loss, destruction, or sale to the Department.

FGC Section 7857(j) states that a commercial fishing permit is not transferable unless otherwise expressly specified in the FGC.

**Documents Submitted By Permittee**

- Commercial Salmon Vessel Permit Transfer Application, received February 12, 2018.
- Copy of the 2017-2018 Biennial Dungeness Crab Tag Fees Receipt.
- Letter from M.S. Young, Chief Warrant Officer, US Coast Guard Investigating Officer, dated November 16, 2017, stating that on February 26, 2016, the U.S. Coast Guard initiated an investigation into the sinking and loss of one life involving the commercial fishing vessel *Miss Jacinda*.
- Copy of the United States Coast Guard (USCG) Certificate of Documentation for the *FV Miss Jacinda*, dated November 20, 2015, which shows Meo V. Nguyen is the owner.
- Original 2017-2018 Commercial Boat Registration for the *FV Shark Bait*.
- Original 2017-2018 Commercial Fishing License for Mr. Bryan K. Bishop.

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- Original California Department of Motor Vehicles Certificate of Number for the F/V *Shark Bait*, dated August 14, 2017, showing Bryan K. Bishop is the owner.

#### **Department Findings**

On February 12, 2018, the Department received your application to transfer the SVP from the F/V *Miss Jacinda* to the F/V *Shark Bait*. FGC Section 8239.1(a) states that the department shall accept a transfer application within one year after the date that a permitted vessel was lost, stolen, or destroyed. FGC Section 8239.1(a) also states that the owner, or the owner's agent, may request an extension of the time to complete a transfer for a period of six months. The Department does not have any record that you submitted a transfer application or request for an extension of the deadline within one year of the date that the loss, theft, or destruction of the F/V *Miss Jacinda* occurred.

Furthermore, the USCG Certificate of Documentation on file with the Department, issued March 17, 2016, for the F/V *Miss Jacinda* shows that you are no longer the vessel owner and thus, are not the permittee. Only the permittee may submit an application to transfer the SVP.

In addition, a search of Department license records shows that the F/V *Miss Jacinda* does not have a valid 2017-2018 SVP.

#### **Department's Determination**

Based on the previously stated information, the Department cannot accept your application to transfer the SVP from the F/V *Miss Jacinda* to the F/V *Shark Bait*. FGC Section 7857(j) prohibits the transfer of a commercial fishing permit, such as the SVP, unless such a transfer is expressly authorized in the FGC. There is no authority allowing a person to sell a vessel, retain the SVP, then later transfer the permit to a vessel owned by a different person, which is what you would like to do. Moreover, you did not submit a transfer application within one year or request an extension of the deadline pursuant to FGC Section 8239.1(a).

The Department also notes that you did not notify the Department of the sale or loss of the F/V *Miss Jacinda* as required by FGC Section 7881(d).

Enclosed are your original documents you submitted to the Department.

#### **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 emailing the Commission at [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov). Pursuant to FGC Section 8246.6, your appeal must be received within 60 days of the date of this letter.

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

Mr. Meo Nguyen  
March 6, 2018  
Page Two

Sincerely,



Joshua Morgan, Chief  
License and Revenue Branch

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

Mr. Bryan K. Bishop

\_\_\_\_\_  
Wilmington, CA

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

**From:** Meo Nguyen <meonguyen[REDACTED].com>  
**Sent:** Monday, June 11, 2018 8:52 AM  
**To:** Ashcraft, Susan@FGC; Miller-Henson, Melissa@FGC; FGC  
**Cc:** Flores, Ruth@Wildlife  
**Subject:** Re: Salmon Permit Number SA0875

2nd Request...

I have been instructed by Ruth Flores of the Department of Wildlife to send my Appeal to the Department of Fish and Game. I do not know who to send this to, so I am sending to the emails I am aware of...

Dear Ms. Flores

I received your letter dated March 6 regarding the transfer of my salmon permit number SA0875.

There was an illness and death in my family. I was out of the country between mid-March and I returned mid-May.

Please consider this my Appeal to your decision to deny transferring my permit.

The above referenced Salmon permit was for my boat, Miss Jacinda. Miss Jacinda was sunk in February 2016. To date, to the best of my knowledge, the Coast Guard's final report has not been issued. I have not yet saved the funds for a new vessel. It is my intent to have a new vessel. It was my desire to maintain the ownership of my Salmon Permit and assign it to F/V Shark Bait until I acquire a new vessel.

If that is not allowed by the Department of Wildlife, I would to offer the following alternative. I would like to purchase an ownership interest in one of my family member's vessels. Then I would like to assign my Salmon permit to this vessel.

Will the Department of Wildlife allow me to do this? How can I proceed.

Thank you,

Meo Nguyen



Virus-free. [www.avg.com](http://www.avg.com)

On Wed, Jun 6, 2018 at 2:45 PM, Meo Nguyen <[meonguyen\[REDACTED\].com](mailto:meonguyen[REDACTED].com)> wrote:

I have been instructed by Ruth Flores of the Department of Wildlife to send my Appeal to the Department of Fish and Game. I do not know who to send this to, so I am sending to the emails I am aware of...

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Will the Department of Wildlife allow me to do this? How can I proceed.

Thank you,

Meo Nguyen

----- Forwarded message -----

From: **Flores, Ruth@Wildlife** <[Ruth.Flores@wildlife.ca.gov](mailto:Ruth.Flores@wildlife.ca.gov)>

Date: Wed, Jun 6, 2018 at 1:13 PM

Subject: RE: Salmon Permit Number SA0875

To: Meo Nguyen <[meonguyen\[REDACTED\].com](mailto:meonguyen[REDACTED].com)>

Cc: FGC <[FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov)>

Hello Mr. Nguyen,

Please send your appeal request directly to the Fish and Game Commission.

In regards to the alternative you suggested in which you would purchase an ownership interest in a family member's vessel and then assign the salmon vessel permit to that vessel, you may submit such a request but it may fall into the same problems as your previous transfer request.

Thank you,

Ruth

Ruth Flores

Commercial Fishing Analyst

License and Revenue Branch

California Department of Fish and Wildlife

[1740 N Market Blvd](#)

[Sacramento, CA 95834](#)

916.928.7470

[Ruth.Flores@wildlife.ca.gov](mailto:Ruth.Flores@wildlife.ca.gov)

[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

Every Californian should conserve water. Find out how at:



[SaveOurWater.com](http://SaveOurWater.com) · [Drought.CA.gov](http://Drought.CA.gov)

**From:** Meo Nguyen <[meonguyen\[REDACTED\].com](mailto:meonguyen[REDACTED].com)>  
**Sent:** Monday, June 04, 2018 5:56 PM  
**To:** Flores, Ruth@Wildlife <[Ruth.Flores@wildlife.ca.gov](mailto:Ruth.Flores@wildlife.ca.gov)>  
**Cc:** FGC <[FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov)>  
**Subject:** Salmon Permit Number SA0875

Dear Ms. Flores

I received your letter dated March 6 regarding the transfer of my salmon permit number SA0875.

There was an illness and death in my family. I was out of the country between mid-March and I returned mid-May.

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Will the Department of Wildlife allow me to do this? How can I proceed.

Thank you,

Meo Nguyen



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

**In the Matter of the Application of**

**MEO NGUYEN, Respondent**

**Case No. 18ALJ04-FGC**

**OAH No. 2019040883**

**PROPOSED DECISION**

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter based on written submissions by the parties.

David Kiene, Senior Staff Counsel, represented the Department of Fish and Wildlife, State of California (Department).

Respondent Meo Nguyen represented himself.

The record was closed and the matter was submitted for decision on October 16, 2019.

## FACTUAL FINDINGS

### Procedural History and Jurisdictional Matters

1. As more specifically described below, the parties agreed that the matter would proceed on written submissions.

2. On February 6, 2018, Bryan Bishop signed an application to the Department to transfer salmon vessel permit (SVP) number SA0875, held by respondent Meo Nguyen (respondent), from the F/V *Miss Jacinda* to the F/V *Shark Bait* (the application). (The designation "F/V" will not be repeated.) The application was received by the Department on February 12. *Miss Jacinda* was owned by Dan Nguyen, a relative of respondent, and Bishop owns *Shark Bait*. It is noted on the application that the *Miss Jacinda* was accidentally lost, stolen, or destroyed on February 26, 2016.

3. The application, exhibit 5 (A1), identifies respondent as the permitted vessel owner, and Bishop as the replacement vessel owner. Bishop erroneously signed the application in the signature space for the owner of the permitted vessel, but not in the space for the signature of the owner of the replacement vessel. Respondent did not sign the application anywhere as it appears in exhibit 5 (A1). The parties proceeded as if respondent was the applicant. The anomalies regarding signatures are noted, but are not a basis for the outcome in this Proposed Decision.

4. On March 6, 2018, the Department sent respondent a letter notifying him that the Department denied to accept the application. On June 4 and 6, 2018, respondent sent emails requesting an appeal.

5. The parties agreed that the matter could be determined based on written submissions, without an administrative hearing, and that the relevant documents would be received in evidence without objection. For clarity of the record, the following documents relating to these procedural steps are marked for identification:

Exhibit 1: May 22, 2019, joint request for a written appeal.

Exhibit 2: May 30, 2019, additional stipulations.

Exhibit 3: May 31, 2019, Order Granting Stipulated Motion for Issuance of Proposed Decision Based on Written Submissions.

6. The May 31, 2019 Order sets deadlines for the parties' submissions, including any supporting documents and declarations. It was also ordered that the matter would be deemed submitted as of October 16, 2019, for purposes of issuance of a Proposed Decision.

7. The parties' submissions are marked for identification and received in evidence as follows.

Exhibit 4: August 12, 2019, respondent's argument.

Exhibit 5: September 11, 2019, Department's Written Arguments, with attachments, denoted as Exhibits A through G. The Written Arguments are marked for identification only; the attachments are received in evidence. Some of the attachments contain multiple documents, described below.

Exhibit 5 (A): Application; Department dungeness crab fee receipt 3/13/17; U.S. Coast Guard letter November 16, 2017; U.S. Department of Homeland Security

Certificate of Documentation issued November [day illegible] 2015; DMV vessel registration for Bishop [vessel identified by number, not name] issued 8/14/17; Department boat registration for *Shark Bait* and fishing license for Bishop. (These documents appear to have been sent to the Department along with the application.)

Exhibit 5 (B): March 6, 2018, Department Notice of Nonacceptance of Application to Transfer Salmon Vessel Permit, Permit SA0875. (This Notice includes the notation that all of the documents listed in Exhibit 5 (A), which accompanied the application, are being returned.)

Exhibit 5 (C): September 11, 2019, Declaration of Ruth Flores.

Exhibit 5 (D): January 30, 2016, U.S. Coast Guard Bill of Sale of *Miss Jacinda* from respondent to Dan Nguyen.

Exhibit 5 (E): September 11, 2019, Declaration of Paul Roberts.

Exhibit 5 (F): March 17, 2016, U.S. Coast Guard Certificate of Documentation of *Miss Jacinda*, owner Dan Nguyen.

Exhibit 5 (G): June 4 and 6, 2018, respondent's emails re appeal request.

Exhibit 6: Received October 14, 2019 [erroneously dated November 7, 2019], respondent's final rebuttal arguments.

### **Issues to be Determined**

8A. The issues for determination are whether the evidence supports the reasons cited by the Department in its March 6, 2018 Notice of Nonacceptance of

Application, exhibit 5 (B). That Notice includes findings and determinations. The findings, in summary, are that:

1. The transfer application was received on February 12, 2018;
2. Fish and Game Code section 8239.1, subdivision (a), authorizes acceptance of a transfer application if filed within one year after the permitted vessel was lost, stolen, or destroyed, and allows a request for a six-month extension of the time to complete the transfer;
3. There was no record of a transfer application or request for extension within one year of the date the *Miss Jacinda* was lost, stolen, or destroyed;
4. U.S. Coast Guard documents showed that respondent was no longer the owner and, therefore, no longer the permittee, and only the permittee may apply to transfer the SVP; and
5. The Department did not have any record that the *Miss Jacinda* had a valid 2017-2018 SVP.

8B. The March 6, 2018 Notice of Nonacceptance of Application includes a section titled Department's Determination, which states:

Based on the previously stated information, the Department cannot accept your application to transfer the SVP from the F/V *Miss Jacinda* to the F/V *Shark Bait*. FGC Section 7857(j) prohibits the transfer of a commercial fishing permit, such as the SVP, unless such a transfer is expressly authorized in



the FGC. There is no authority allowing a person to sell a vessel, retain the SVP, then later transfer the permit to a vessel owned by a different person, which is what you would like to do. Moreover, you did not submit a transfer application within one year or request an extension of the deadline pursuant to FGC Section 8239.1(a).

The Department also notes that you did not notify the Department of the sale or loss of the F/V *Miss Jacinda* as required by FGC Section 7881(d).

(Exhibit 5 (B).)

### **Relevant Facts**

9. SVP's are annual permits. From September 9, 2011 to March 31, 2017, respondent held SVP number SA0875, for use on the *Miss Jacinda*. The SVP expired on March 31, 2017, and has not been renewed.

10. On January 30, 2016, respondent completed a bill of sale to transfer ownership of the *Miss Jacinda* to Dan Nguyen (Exhibit 5 (D).) The U.S. Coast Guard issued a Certificate of Documentation on March 17, 2016, indicating the owner was Dan Nguyen. (Exhibit 5 (F).) Respondent wrote that he was in the midst of a divorce and, due to financial issues, he was advised to transfer the vessel to a family member. He intended to have the *Miss Jacinda* transferred back when his finances were better.

11. The *Miss Jacinda* sank in the Santa Barbara channel on February 26, 2016. A life was lost. An investigation of the incident by the U.S. Coast Guard commenced. Respondent understands that the investigation was recently completed, but he has not yet received the report.

12. The Department contends that respondent did not report the loss, destruction, or sale of the *Miss Jacinda* within one year, as required by law. In his declaration, Paul Roberts, a Department employee responsible for records relating to SVP's, testified that, after diligent searches: (1) the application is the only application for transfer of SVP number SA0875 from the *Miss Jacinda*; (2) there were no requests filed to extend the time to complete any transfer of SVP number SA0875; (3) he did not locate any reports filed with the U.S. Coast Guard or any other agency or fire department investigating the loss of the *Miss Jacinda*; and (4) the only notification of the sale of the *Miss Jacinda* to Dan Nguyen was dated January 30, 2016, and was received by the Department on June 26, 2017.

13. Respondent contends that, after the loss of the *Miss Jacinda*, he went to the Department's office in Long Beach "right away" and informed them of the sinking of the *Miss Jacinda*. (Exhibit 4.) He was told that the Department required the Coast Guard's report, which respondent has not yet received. Respondent did not provide a date or more specific time period of this contact, or the name of any person to whom he spoke, or any confirmation that the contact took place.

14. Along with the application received February 12, 2018, respondent provided to the Department a letter from the Coast Guard, dated November 16, 2017, indicating that the Coast Guard initiated an investigation into the sinking and loss of

life involving the *Miss Jacinda*. There is no evidence how or when respondent received this letter, or that it was submitted to the Department any time before February 2018.

15A. It was proven by the preponderance of the evidence that respondent did not properly and timely report to the Department either the sale of the *Miss Jacinda* in January 2016, or the loss of the *Miss Jacinda* in February 2016. As respondent was no longer the owner at the time of loss, the Department's contention that respondent failed to report the loss is given little evidentiary weight.

15B. Although the failure to properly and timely report the sale or loss is included in the Department's Determination, it is not among the primary reasons for nonacceptance. The primary reasons for nonacceptance cited by the Department are the failure to file the application in a timely manner, and that respondent was no longer the owner of the *Miss Jacinda* when the application was filed.

16. In the Department's March 6, 2018 Notice of Nonacceptance, it is noted that, according to the Department's records, the *Miss Jacinda* did not have a valid SVP for the period 2017-2018. The Department contends that the SVP cannot be transferred because it was not valid in 2017-2018. (Exhibit 5.) This is not listed as a basis for nonacceptance of the transfer application in the Department's Determination. Respondent offered information about his attempts to pay the permit fee for the period 2017-2018. However, because this was not a basis for nonacceptance, the Department contention and respondent's information are not relevant to the issues.

17. Respondent raises numerous other contentions, and makes other statements, some of which are addressed below. However, none of these other contentions or statements relate to the primary reasons for nonacceptance.

18. Respondent states that Department employee Ruth Flores had him revise the application several times "to get it right." (Exhibit 4.) Ms. Flores disputes this in her declaration. (Exhibit 5 (C).) Respondent replies that he had numerous contacts with Ms. Flores, including receipt of certified letters. (Exhibit 6.) This information is not relevant to the primary reasons for nonacceptance.

19. Respondent complains that he was never advised about any issue concerning his lack of an ownership interest in the *Shark Bait*, and that he would have arranged to get a percentage ownership had he known. This information is not relevant to the primary reasons for nonacceptance.

20. Respondent contends that the Department is not issuing new salmon permits and he is therefore effectively banned from obtaining one. (Exhibit 4.) The Department replies that there is nothing preventing respondent from obtaining another vessel with an existing SVP, or obtaining another vessel and having an SVP transferred to it. (Exhibit 5.) Respondent replies, again, that the Department is not issuing new SVP's and that he does not know anyone selling a vessel with an SVP or willing to transfer their SVP to him. These contentions and arguments are not relevant to the issues.

21. Respondent requests that Dan Nguyen be permitted to renew his SVP. That request is beyond the issues included in these proceedings.

22. In summary, respondent did not file his application to transfer his SVP within one year of the loss of the *Miss Jacinda* in February 2016. Prior to submitting the application in January 2018, respondent did not make a request for an extension of

time to complete the transfer, as is permitted by law. The application was filed beyond the time period allowed by law.

## LEGAL CONCLUSIONS

1. The procedure to be followed in this matter is set forth in California Code of Regulations, title 14, section 746, to assure due process to the participants. Under subdivision (c), for an appeal from the denial of an application for transfer of a permit, the president of the Fish and Game Commission may appoint a member of the State Bar of California to be the hearing officer, and several procedures are set forth relating to the hearing. By agreement of the parties, this matter proceeded without a hearing, and on the parties' written submissions. (See Factual Findings 1 - 7.)

2. The burden of proof is on the applicant/respondent to establish he is entitled to the permit transfer for which he applied. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044; *Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 476.)

3. Under Fish and Game code section 8246.6, a person who has been denied a permit transfer may appeal the denial within 60 days of the decision. Although respondent submitted the appeal beyond 60 days, the Fish and Game Commission has allowed the appeal to proceed. (Exhibit 5, page 3, lines 12 - 14.)



4. The circumstances under which the Fish and Game Commission can reverse the denial of an application to transfer a permit are described in Fish and Game Code section 8246.7, which states:

(a) The commission shall reverse an order of revocation, order the permit renewed, or order the approval of a permit transfer only if it finds one of the following grounds:

(1) The permittee failed to submit an application and pay the fees for renewal on or before April 30 pursuant to Section 8235 and the failure to renew a permit until after the expiration date was due to death, physical illness, mental incapacity, or being called to active military duty, and the person was not reasonably able to have an agent renew the permit.

(2) A lienholder of a permitted vessel, if the vessel is the property of the lienholder as a result of foreclosure, surrender, or litigation, can show loss due to the nonrenewal of a permit by the permittee, and the nonrenewal occurred without the knowledge of the lienholder.

(3) If, in the case of permit revocation because of fraud, evidence is provided to the commission disputing the charges of fraud. If the commission finds there was no fraud after consideration of all of the evidence, the commission

may order the revocation annulled, and, if the permit expiration date has passed during the pendency of the hearing on the appeal, the commission may order the department to renew the permit upon payment of the fees.

(4) The denial of the permit transfer was arbitrary or capricious.

(5) The denial of the permit transfer was pursuant to subdivision (g) or (h) of Section 8239 and the applicant can show that the 18-month requirement cannot be met due to death, physical illness, mental incapacity, or being called to active military duty.

(b) Each appeal shall be heard and considered separately on its own merits.

5. Fish and Game Code section 7881, subdivision (d), provides that the owner of a registered vessel that is lost or destroyed shall immediately report the loss or destruction of the vessel to the Department. Respondent was not the owner of the *Miss Jacinda* at the time of its loss.

6. Under Fish and Game Code section 8231, subdivision (d), a commercial SVP can be issued annually.

7. Under Fish and Game Code section 7857, subdivision (j): "A commercial fishing license, permit, or other entitlement is not transferable unless otherwise expressly specified in this code."

8. The transfer of an SVP from a lost vessel to a replacement vessel is governed by Fish and Game Code section 8239, subdivisions (a) and (b), which state:

(a) Unless otherwise prohibited, the department shall accept a transfer application within one year after the date that a permitted vessel was lost, stolen, or destroyed, notwithstanding any inability to physically examine the permitted vessel to determine its salmon fishing potential. Only the permittee at the time of the loss, theft, or destruction of the vessel may apply for the transfer of the vessel permit. Proof that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard or any other law enforcement agency or fire department investigating the loss.

(b)(1) The owner, or the owner's agent, may request an extension of the time to complete a transfer under subdivision (a) if the application for extension is submitted before the end of the time to submit an application under subdivision (a), or before the end of any previous extensions granted under this subdivision, whichever date is later.

(b)(2) The department, after consultation with the review board and for good cause shown, including, but not limited to, inability to find a replacement vessel or pending

litigation, may grant an extension of the time to complete a transfer under subdivision (a) for a period of six months.

The department may grant further extensions under this subdivision, not to exceed a total time period of five years after the date the permitted vessel was lost, stolen, or destroyed if the permit fees are paid annually as required in paragraph (2) of subdivision (b) of Section 8239 and subdivision (c) of Section 8240.

9. Fish and Game Code section 8239.1, subdivision (a), specifies that the applicant must provide proof that the vessel was lost, stolen, or destroyed by providing "a copy of the report filed with the United States Coast Guard or any other law enforcement agency or fire department investigating the loss." Respondent submitted evidence that the Coast Guard was investigating and recently prepared a report. Respondent noted that he could not supply the required proof of loss until the investigation report was complete. The statutory requirement, though, is not for respondent to provide a report prepared by the Coast Guard but, rather, a report filed with the Coast Guard or other listed agency. There is evidence that respondent did not provide such information to the Department.

10. Under Fish and Game Code section 8241, subdivision (c), the applicant for transfer of a permit to a replacement vessel must own the replacement vessel.

11. At the time the application was filed, February 12, 2018, respondent was no longer the owner of the *Miss Jacinda*, having transferred ownership to Dan Nguyen on January 26, 2018. Dan Nguyen, and not respondent, became the

permittee. As respondent was no longer the permittee, he could not apply for transfer of the permit. Accordingly, the Department correctly declined to grant the application, pursuant to Fish and Game Code section 8239.1. )See Factual Findings 9 and 10.)

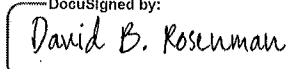
12. Respondent failed to apply to transfer the SVP within one year after the *Miss Jacinda* was lost, and did not request an extension of time for the filing of the application. Accordingly, the Department correctly declined to grant the application, pursuant to Fish and Game Code section 8239.1. (See Factual Findings 7 – 11.)

13. The Department's nonacceptance of the transfer application was not arbitrary or capricious.

### ORDER

The application of respondent Meo Nguyen for transfer of his salmon vessel permit, SVP number SA0875, from the F/V *Miss Jacinda* to the F/V *Shark Bait*, is denied.

DATE: October 29, 2019

DocuSigned by:  
  
DAVID B. ROSENMAN

Administrative Law Judge

Office of Administrative Hearings