

STAFF SUMMARY FOR APRIL 15-16, 2020

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

Executive session will include four standing topics:

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

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

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

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

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

(B) *Possible litigation involving FGC*

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

(C) *Staffing*

For details about staffing, see the executive director's report under Agenda Item 3(A) for today's meeting.

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

- I. *Tseng sport fishing request for reinstatement*: Consider the Proposed Decision in Agency Case No. 18ALJ13-FGC, regarding the request for reinstatement of his sport fishing privileges filed by Jeff Tseng. On Jan 24, 2014, DFW provided Mr. Tseng notice that his sport fishing privileges were revoked. The DFW notice was based on an Oct 17, 2013 conviction under Fish and Game Code 7121 relating to his illegal commercialization of red abalone.

On Nov 15, 2017, the criminal court amended the record of the original criminal matter adding a charge of disturbing the peace and dismissing the charge related to abalone. Mr. Tseng filed a request to reinstate his privileges with FGC on Apr 20, 2018. FGC referred the matter to the Office of Administrative Hearings (OAH) and, on Dec 9, 2019, OAH conducted a hearing. On Feb 19, 2020, OAH provided FGC a proposed decision (Exhibit D1). The proposed decision finds that since the underlying criminal conviction was dismissed, Mr. Tseng's sport fishing privileges should be reinstated. On Mar 18, 2020, DFW submitted argument opposing the proposed decision (Exhibit D2).

STAFF SUMMARY FOR APRIL 15-16, 2020

- II. *Colker sea urchin dive permit appeal*: Consider the appeal filed by David Colker in Agency Case No. 19ALJ15-FGC regarding his request to renew his sea urchin diving permit. On Jul 23, 2019, DFW provided Mr. Colker notice that DFW could not reinstate Mr. Colker's sea urchin diving permit (Exhibit D3). On Sep 16, 2019, Mr. Colker filed an appeal with FGC (Exhibit D4). On Mar 18, 2020, DFW submitted a letter to FGC stating that DFW does not oppose granting the appeal (Exhibit D5).
- III. *Rehmke salmon vessel permit appeal*: Consider the appeal filed by William Rehmke in Agency Case No. 19ALJ19-FGC regarding his request to renew his salmon vessel permit. On Oct 24, 2019, DFW provided Mr. Rehmke notice that DFW could not reinstate Mr. Rehmke's salmon vessel permit (Exhibit D6). On Dec 2, 2019, Mr. Rehmke filed an appeal with FGC (Exhibit D7). On Mar 19, 2020, DFW submitted a letter to FGC stating that DFW does not oppose granting the appeal (Exhibit D8).

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

FGC staff: Reject the proposed decision regarding the request for reinstatement by Jeff Tseng and schedule the case for consideration at a future FGC meeting that allows staff to prepare the record. Grant the appeals filed by David Colker and William Rehmke.

Exhibits

- D1. [Proposed Decision for Case No 18ALJ13-FGC, OAH No 2019110284](#), received Feb 19, 2020
- D2. [Letter from DFW to FGC](#), dated Mar 18, 2020
- D3. [Letter from DFW to David Colker](#), dated Jul 23, 2019
- D4. [Letter from David Colker to FGC](#), received Sep 16, 2019
- D5. [Letter from DFW to FGC](#), dated Mar 18, 2020
- D6. [Letter from DFW to William Rehmke](#), dated Oct 24, 2019
- D7. [Letter from William Rehmke to FGC](#), dated Dec 2, 2019
- D8. [Letter from DFW to FGC](#), dated Mar 19, 2020

Motion/Direction

- (D) Moved by _____ and seconded by _____ that the Commission rejects the proposed decision regarding the request for reinstatement by Jeff Tseng and directs staff to prepare the record to allow FGC to consider the matter at a future Commission meeting.

AND

Moved by _____ and seconded by _____ that the Commission grants the appeal filed by David Colker.

AND

Moved by _____ and seconded by _____ that the Commission grants the appeal filed by William Rehmke.

2020 FEB 19 PM 2:00

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

In the Matter of the Petition for Reinstatement of:

JEFF TSENG, Petitioner

Case No. 18ALJ13-FGC

OAH No. 2019110284

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 9, 2019, in Sacramento, CA.

Steffanie Mello, Senior Staff Counsel, represented the California Department of Fish and Wildlife (Department), in conjunction with the California Fish and Game Commission (Commission).

Adam R. Stull, Attorney at Law, represented petitioner Jeff Tseng, who was present.

Oral and documentary evidence was received on December 9, 2019. The record was held open to allow the parties to submit written closing arguments to address the impact of a Penal Code section 1385 dismissal on petitioner's license revocation. The Department's closing and reply briefs were marked as Exhibits 15 and 16, and admitted as argument. Petitioner's closing brief was marked as Exhibit A, and admitted

as argument. The record was closed and the matter was submitted for decision on January 27, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. By letter dated January 29, 2014, the Department notified petitioner that his sport fishing privileges were permanently revoked pursuant to Fish and Game Code section 12154. The revocation was based on petitioner's October 17, 2013 conviction for violating Fish and Game Code section 7121, relating to his illegal commercialization of red abalone. By that letter, petitioner was notified of his right to appeal. By letter to the Commission dated April 16, 2018, petitioner requested that his sport fishing privileges be reinstated.

2. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Petitioner's Conviction

3. On October 17, 2013, in the Los Angeles County Superior Court (Superior Court), Case No. 3BF02848, petitioner was convicted on a plea of nolo contendere of violating Fish and Game Code section 7121, a misdemeanor. The court ordered petitioner to pay fines, fees, and restitution, and serve 24 months of summary probation. The court also ordered that petitioner's sport fishing license be revoked. On December 21, 2016, the court ordered that petitioner's plea be set aside and vacated,

a plea of not guilty entered, and the complaint be dismissed pursuant to Penal Code section 1203.4.

4. On November 15, 2017, the court ordered: "it appearing to the court that the minute order in the above entitled action does not properly reflect the court's order[,] [s]aid minute order is amended nunc pro tunc as of that date." On motion of the prosecution, the court ordered the complaint against petitioner be amended by interlineation to add a violation of Penal Code section 415, subdivision (2), willfully disturbing the peace, an infraction. Petitioner pled guilty to the added charge for disturbing the peace. The charge against petitioner regarding Fish and Game Code section 7121 was dismissed "in furtherance of justice per [Penal Code section] 1385."

License Revocation

5. Petitioner's sport fishing license was revoked under Fish and Game Code section 12154, subdivision (a), which states:

Upon a conviction of a violation of this code or any regulation adopted pursuant thereto that is punishable pursuant to Section 12012, 12013, 12013.3, or 12013.5, the department may suspend or permanently revoke a person's hunting or sport fishing license or permit privileges.

6. Section 12154 allows a person whose license was revoked under this section to appeal the revocation. When considering reinstatement, the Commissioner may consider:

... the nature, circumstances, extent, and gravity of the person's violations, the person's culpability for the

violations, and the injury to natural resources by the violations, and may restore a person's hunting or sport fishing license or permit privileges.

(Fish & Game Code, § 12154, subd. (b).)

7. The charges brought against petitioner in 2013, and his subsequent plea, were based on his violation of Fish and Game Code section 7121, as that section relates to section 12012. Consequently, the Department revoked his license in 2014. In 2018, petitioner requested reinstatement of his license. The Department denied the request, determining that dismissal of a conviction under either Penal Code section 1203.4 or 1385 was not a ground for reinstatement permitted under Fish and Game Code section 12154, subdivision (b).

The Department's Argument

8. In its written closing argument, the Department did not analyze the effect of a Penal Code section 1385 dismissal, other than to state it is not listed in Fish and Game Code section 12514, subdivision (b). At hearing, however, the Department also argued the Superior Court's dismissal was improper, citing several California Appellate Court cases. (*See, e.g., People v. Ainsworth* (1990) 217 Cal. App. 3d 247 [finding a trial court lacks jurisdiction to rule on a defendant's motion for discovery after a judgment is final].) The Department asserted the Superior Court lacked jurisdiction to dismiss under Penal Code section 1385 because a plea was entered, sentencing was complete, and petitioner's probationary period had long since ended. Specifically, the Department contended a "nunc pro tunc [order] under [Penal Code section] 1385 is only done when the person is under the court's jurisdiction." On that ground, the Department believes the dismissal was improper.

Petitioner's Argument

9. Petitioner argued two points: 1) because the court dismissed the conviction upon which basis the Department revoked petitioner's license, his license must be reinstated; and 2) the Department's evidence did not establish a basis for a lifetime license revocation. The court entered the Penal Code 1385 dismissal on the prosecutor's motion. No party appealed.¹ The Department was not a party and did not seek to intervene in that matter.

Discussion

10. The Department properly revoked petitioner's license in 2014 based on his conviction for violating Fish and Game Code section 7121. Fish and Game Code section 12154, subdivision (a), allowed the Department, "[u]pon a conviction of a violation of [the Fish and Game Code]," to "suspend or permanently revoke a person's . . . sport fishing license" In 2017, however, there was no conviction on which to sustain that revocation.

11. The Department's argument that Section 12154 does not explicitly list Penal Code section 1385 as a grounds to restore a license ignores the import and effect of a dismissal under that section. Penal Code section 1385 is not an "expungement" under Penal Code section 1203.4, which, by its terms, continues to recognize the existence of the conviction. For example, Penal Code section 1203.4, subdivision (a)(1) states the defendant cannot own or possess a firearm, he must

¹ Indeed, the People cannot appeal a dismissal under Penal Code section 1385. (*People v. Superior Court of Marin County* (1968) 69 Cal. 2d 491, 498.)

continue to disclose the conviction in a licensure application, and the expunged conviction can be pled in a subsequent prosecution.

12. In contrast, Penal Code section 1385 dismisses the criminal complaint entirely. Section 1385 authorizes a court to dismiss "in furtherance of justice" in any circumstance in which the legislative body has not clearly manifested a contrary intent. (*People v. Superior Court of Marin County (Howard)* (1968) 69 Cal. 2d 491, 503–505.) "A judgment of dismissal is not an adjudication the charged crime was not committed. Rather, the dismissal operates to free the criminal defendant from further prosecution and punishment for that crime. The defendant stands as if he had never been prosecuted for the charged offense." (*People v. Superior Court (Flores)* (1989) 214 Cal. App. 3d 127, 136 [citing *People v. Simpson* (1944) 66 Cal. App. 2d 319, 329].)

13. The Department's argument that the Superior Court's dismissal was improperly granted, and therefore should not be given effect, is unavailing. It is not within the jurisdiction or power of an administrative tribunal to overturn the final ruling of a Superior Court. The Department offered no authority to the contrary.

14. Penal Code section 1385 serves to make the convicted whole. Here, Penal Code section 1385 serves to render invalid the Department's revocation retroactively. The revocation was based on Fish and Game Code section 12154, subdivision (a), which provides a license may be revoked "[u]pon a conviction of a violation" of the Fish and Game Code. There is no longer a conviction on which to base revocation. Consequently, petitioner's license must be reinstated.

15. For the reasons stated above, whether petitioner established a basis for reinstatement, or the Department properly applied the factors for reinstatement under Fish and Game section 12154, subdivision (b), need not be addressed. These factors

apply to determine whether a license should be reinstated following a conviction. As discussed above, there is no conviction upon which to base revocation.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to reinstate a license, petitioner bears the burden to establish rehabilitation. (*See Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. Fish and Game Code section 12154, subdivision (a) states:

Upon a conviction of a violation of this code or any regulation adopted pursuant thereto that is punishable pursuant to Section 12012, 12013, 12013.3, or 12013.5, the department may suspend or permanently revoke a person's hunting or sport fishing license or permit privileges.

3. As set forth in Factual Finding 3, petitioner was convicted of violating Fish and Game Code section 7121, which is punishable under Fish and Game Code section 12012. The Department established this conviction was cause to revoke petitioner's sport fishing license in 2014.

4. Penal Code section 1385, subdivision (a) provides:

The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed.

5. For the reasons stated in Factual Findings 11 through 14, the Superior Court's order of dismissal eliminates the conviction on which the Department based petitioner's license revocation. There being no conviction, there is no longer cause for revocation. Petitioner's license must be reinstated.

ORDER

Jeff Tseng's petition to reinstate his sport fishing license is GRANTED.

DATE: February 18, 2020

DocuSigned by:
Heather M. Rowan
F06C72C19C3B4DA...

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings



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



March 18, 2020

Fish and Game Commission
1416 9th street, 13th Floor
Sacramento, CA 95814

Dear Commission Members:

IN THE MATTER OF THE REINSTATEMENT OF JEFF TSENG

I urge you to reject the Proposed Decision issued by Administrative Law Judge (ALJ) Heather Rowan *In the Matter of the Reinstatement of Jeff Tseng* (Proposed Decision).¹ In the Proposed Decision, ALJ Rowan concludes that because Mr. Tseng's conviction was dismissed after the Department revoked his sportfishing privileges, his privileges must be reinstated. But as explained below, the Proposed Decision disregards factors the Commission is statutorily required to consider in evaluating a reinstatement request, unnecessarily constrains the Commission's discretion in evaluating reinstatements, and allows an admitted wildlife trafficker to continue fishing.

The ALJ failed to address the central issue raised by Mr. Tseng's request for reinstatement. The issue before the Commission is whether, considering mandatory statutory factors along with any other facts you wish to consider, you should re-instate Mr. Tseng's sportfishing privileges. The issue is not whether there is authority today to revoke Mr. Tseng's privileges. His privileges are currently revoked.

The facts in this matter are undisputed. Mr. Tseng was the subject of a Department Special Operations Unit (SOU) investigation in June of 2012. SOU focused on Mr. Tseng after learning that he asked an abalone diver to sell him abalone. On June 12, 2012, Mr. Tseng bought 10 abalone from an undercover officer. Officers observed Mr. Tseng resell some of the purchased abalone to members of the community immediately

¹ Government Code section 11517, subdivision (c)(2)(E) authorizes the Commission to "Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript." Likewise, California Code of Regulations, title 14, section 746, subdivision (a)(11), authorizes the Commission to "adopt, revise or reject the proposed decision."

after he had purchased them from the undercover officer. On January 12, 2013, Mr. Tseng purchased 40 abalone from the undercover officer. At the close of the investigation, Mr. Tseng was still contacting the undercover officer to purchase even more abalone.

On October 17, 2013, Mr. Tseng pled no contest to a single violation of Fish and Game Code (FGC) section 7121, illegal sale or purchase of fish. On January 29, 2014, Law Enforcement Division Chief Michael Carion revoked Mr. Tseng's sportfishing privileges pursuant to FGC section 12154. It is undisputed that the Department had the authority to revoke Mr. Tseng's license. (OAH Proposed Decision, page 5, paragraph 10.) Mr. Tseng's sportfishing privileges are currently revoked. On November 15, 2017, the Superior Court amended Mr. Tseng's conviction to a violation of Penal Code section 415(2), disturbing the peace by loud noise, an infraction completely unrelated to his wildlife trafficking violation. Mr. Tseng now asks you to reinstate his sportfishing privileges.

The Commission's authority to reinstate Mr. Tseng's privileges is codified in FGC section 12154(b)(1), which states, "The Commission **shall** consider at least the nature, circumstances, extent, and gravity of the person's violations, the person's culpability for the violations, and the injury to the natural resources by the violations." (FGC section 12154(b)(1) (emphasis added).) Thus, while the Commission may consider the subsequent changes in Mr. Tseng's criminal record following revocation, it must also consider the factors listed in FGC section 12154(b)(1).

But Mr. Tseng did not address, nor did ALJ Rowan consider, any of these factors, even though the Department detailed in its closing brief why these factors justify continued revocation. Instead, ALJ Rowan assumes that a change in a criminal record requires an automatic reinstatement of fishing privileges. Thus, she concludes the Commission is precluded from considering factors described in FGC section 12154(b)(1), even though Mr. Tseng still admits to violating FGC section 7121.² Thus, the Proposed Decision unnecessarily restricts the Commission's authority to weigh the FGC section 12154(b)(1) factors, along with any other factors deemed important to the Commission, in evaluating a reinstatement request.

In conclusion, the Proposed Decision ignores factors the Commission is required to consider, unnecessarily constrains the Commission's authority, and ultimately would allow an admitted wildlife trafficker to continue abusing fishery resources. The Department strongly urges the Commission to reject the Proposed Decision, consider

² Jeff Tseng recently admitted that he violated, stating "The undercover officer sold [Jeff Tseng] 40 abalone." (Tseng Final Argument, p. 2, lines 16 and 28.)

Fish and Game Commission
March 18, 2020
Page 3

all the factors listed in FGC section 12154(b)(1), and reject Mr. Tseng's reinstatement request based upon the record.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Bess", is written over the word "Sincerely,".

Chief David Bess
Deputy Director
Law Enforcement Division



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

July 23, 2019

Mr. Dave J. Colker
[REDACTED]

Subject: **NOTICE OF DENIAL FOR ISSUANCE OF A SEA URCHIN DIVING PERMIT**

Dear Mr. Colker:

This is in response to your request to reinstate your Sea Urchin Diving Permit (SUDP) Permit Number SUD321 (L46923).

Authority-Sea Urchin

Pursuant to California Code of Regulations (CCR), Title 14, Section 120.7(h), renewal appeal provisions are specified in Fish and Game Code (FGC) Section 7852.2.

Authority-Late Renewal Applications

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

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

Reasons for Appeal to the Department

In your letter received on June 26, 2019, you are requesting reinstatement of your SUDP. You stated you were unable to renew your SUDP due to financial hardship that you experienced in the industry. You further stated that you are now able to pay the fees to have your SUDP reinstated.

Department Findings

Department license records show that you last held a valid 2017-2018 SUDP, which made you eligible to renew your permit for the 2018-2019 permit year.

Departments Determination

Based on the previously stated information, your request to reinstate your SUDP is denied, because you last held a valid SUDP in the 2017-2018 permit year. FGC Section 7852.2(c) requires the Department to deny any application for renewal received after

Mr. Dave L. Colker
July 23, 2019
Page Two

March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must submit a written appeal to the Fish and Game Commission (Commission) either by mail at P.O. Box 944209, Sacramento, CA 94244-2090, or by email at fgc@fgc.ca.gov. Pursuant to FGC Section 7852.2(d), your written appeal must be received within 60 days of the date of this letter. The Commission, upon consideration of the appeal, may grant the renewal of the SUDP. If the Commission grants the renewal, it shall assess the applicable late fees, which amount to \$1,588.75. 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,

A handwritten signature in cursive script, appearing to read "Joshua Morgan", followed by the word "for" in a smaller, less distinct script.

Joshua Morgan, Chief
License and Revenue Branch

cc: Ms. Melissa Miller-Henson
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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 15, 2019

Mr. Dave J. Colker (L46923)
Fees Required for Reinstatement for a
Sea Urchin Diving Permit
Permit Number SUD321

Year		Permit Fees
2018-2019	Sea Urchin Diving Permit	\$482.75
	Late Fee (61 days to March 31, 2019)	<u>\$607.75</u>
		\$1,090.50

Prior Year Fees Due **\$1,090.50**

Prior Year permit fees must be paid before 2018-2019 Sea Urchin Diving Permit can be issued.

Current Year Fees

2019-2020	Sea Urchin Diving Permit	<u>\$498.25</u>
		\$498.25

Total Current Fees **\$498.25**

Total Fees Due **\$1,588.75**

If the Fish and Game Commission should recommend approval, payment of \$1,588.75 would be due.



Sept 6, 2019

Hello,

This in response to a letter I received dated July 23, 2019 from The California Department of Fish and Wildlife in regards to the denial for issuance of a Sea Urchin Diving Permit.

I would like to explain my circumstance and what role I play in the harvesting of sea urchins in California. I have held a commercial fishing license and a crew-member permit for the last 13 consecutive seasons. I also received a Sea Urchin Dive permit in 2011 and kept it current, paying the late fees when applicable with the only exception of the 2018-19 fishing year. There was multiple years that I paid the permit fee plus all late fees.

During the 2018-2019 fishing year I had experienced hardships that the majority of my industry had experienced. This last year was proven as the slowest production year on record for harvesting sea urchins. (PROOF: Our industry has been awarded a Declaration of Disaster, based on the catch yields). I stayed in the industry by deck-handing on urchin boats, receiving much lower pay than a "diver", hoping it would get better.

I am, as well involved in the California Sea Urchin Commission as an elected alternate port representative. I have dedicated many hours to this commission and wish to continue dedicating my time to this.

During the last year my Mother purchased a commercial fishing vessel, a 33 foot Radon (FV NORTH SEA, CURRENT CF 41433) with the intentions of providing me a platform to harvest Sea Urchins and start using my dive permit. I am operating this vessel as a Deck-Hand/Operator, but will need to have the ability to dive in order to make this boat a primary source of income for me and give my Mother the opportunity to get a return on her money invested. We will need to consider changing fisheries or even states if I cannot run the boat as a diver/operator. I do not want this to happen, as I am very passionate about the urchin harvesting here in California.

Please consider my appeal to re-instate my Sea Urchin Diving Permit. I apologize for missing the late payment last year and can pay all dues immediately upon approval of my re-instatement of my dive permit.

Thank you in advance for the proper consideration of this request. I am available for comments or an in person interview at any time!

*attached: additional current CA Sea Urchin Permit holders endorsements of their support for the approval of my request.

I can be reached at [REDACTED], or emailed at [REDACTED].

[REDACTED] L46923
[REDACTED]
[REDACTED]

PETITION FOR RE-INSTATEMENT OF SEA URCHIN DIVE PERMIT FOR DAVE COLKER L46923

I, UNDERSIGNED HEREBY AM IN FAVOR OF THE RE-INSTATEMENT OF THE CALIFORNIA DIVE PERMIT FOR DAVE COLKER, L46923. I UNDERSTAND THAT IF THE CALIFORNIA DEPARTMENT OF FISH AND GAME COMMISSION SHALL DECIDE TO RE-INSTATE THIS SAID PERMIT, DAVE COLKER, L46923 WILL RECEIVE HIS PERMIT BACK CONTINGENT TO ALL DUES PAID.

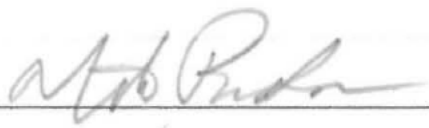

THE UNDERSIGNED ARE ALL CURRENT CA SEA URCHIN DIVE PERMIT HOLDERS. THE FOLLOWING INFORMATION IS PRIVATE AND CANNOT BE USED FOR ANY OTHER PURPOSES OTHER THAN THE INTENDED USAGE ON THIS PAGE.

NAME

SIGNATURE

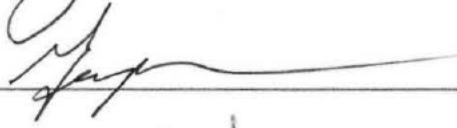

VERIFICATION

(L#, PH#, or EMAIL)

Michael Perrotti  

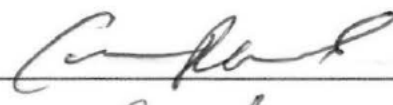

BRANDON  

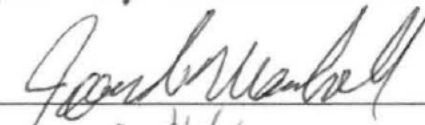

Zachary Robinson  L91117 

Gary Wollemann  


Larry Liguori  

DAVE Polie  

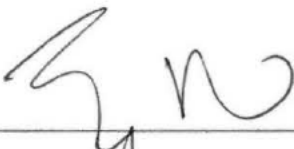

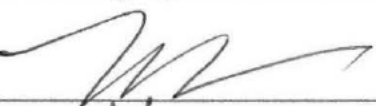


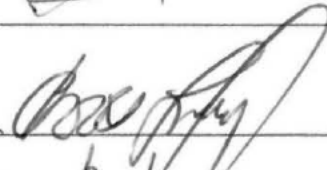
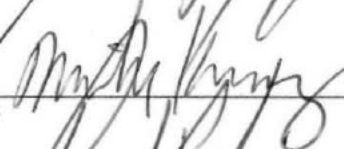
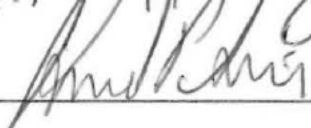
Conner Rhoads  

JAMES MARSHALL  L10624 

Chris Michalak  L10597 



*PETITION FOR RE-ISSUANCE OF CA SEA URCHIN DIVE PERMIT FOR DAVE COLKER, L46923

NAME	SIGNATURE	VERIFICATION (L#, PH#, or EMAIL)
Eric Bjorklund		L 50318
Adrian Medina		L 54301
Devin Sollender	Devin Sollender	L 48667
Mark Demach		Trade Wind SF
Lance Maassen		
Laslo Nencsi		
Chris Lund		L 09551
Michael Kenny		L 90726
Raymond Greiner		L 09857



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



March 18, 2020

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

Re: *In the Matter of David Colker*

Dear Commissioners:

This letter is in response to David Colker's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his Sea Urchin Diving Permit, #SUD321 ("SUDP"). The SUDP was last valid during the 2017-18 fishing year. Mr. Colker submitted his appeal request on September 16, 2019. The Department will not be participating in this appeal and accordingly, does not object to the renewal of the SUDP for the 2020-2021 fishing year, provided that he pays all applicable fees.

The fees that Mr. Colker must pay to renew the SUDP 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 **\$1,588.75** (see attached fee schedule) plus any required fees for the 2020-2021 fishing year.

If you have any questions please contact me at the address above or by e-mail at David.Kiene@wildlife.ca.gov.

Sincerely,
DocuSigned by:

0254C8AA0A1D45E
DAVID KIENE

Senior Staff Counsel

Cc: David Colker



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



July 15, 2019

Mr. Dave J. Colker (L46923)
Fees Required for Reinstatement for a
Sea Urchin Diving Permit
Permit Number SUD321

Year		Permit Fees
2018-2019	Sea Urchin Diving Permit	\$482.75
	Late Fee (61 days to March 31, 2019)	<u>\$607.75</u>
		\$1,090.50

Prior Year Fees Due **\$1,090.50**

Prior Year permit fees must be paid before 2018-2019 Sea Urchin Diving Permit can be issued.

Current Year Fees

2019-2020	Sea Urchin Diving Permit	<u>\$498.25</u>
		\$498.25

Total Current Fees **\$498.25**

Total Fees Due **\$1,588.75**

If the Fish and Game Commission should recommend approval, payment of \$1,588.75 would be due.



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

October 24, 2019

Mr. William F. Rhemke
[REDACTED]

**Subject: NOTICE OF DENIAL FOR REINSTATEMENT OF SALMON VESSEL
PERMIT, PERMIT NUMBER SA0616**

Dear Mr. Rhemke:

This letter is in response to your request to reinstate the Salmon Vessel Permit (SVP), Permit Number SA0616, for the F/V *Judy S* (FG23512).

Authority-Salmon Vessel Permit

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

Authority-Late Renewal Applications

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

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

Reason for Appeal to the Department

In your letter received on October 15, 2019, you are requesting reinstatement of the SVP for the F/V *Judy S*. You explained that the renewal papers for the F/V *Judy S* were not received in a timely manner due to communication issues with the previous owner. This resulted in the permit renewal lapsing.

Department Findings

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

Mr. William F. Rehmke

May 7, 2019

Page 2

Department Determination

Your request to reinstate the SVP for the *F/V Judy S* is denied, because the *F/V Judy S* last held a valid SVP in the 2016-2017 permit year. The Department received your request for reinstatement of the SVP on October 15, 2019. FGC Section 7852.2(c) requires the Department to deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must submit a written appeal to the Fish and Game Commission (Commission) either by mail at P.O. Box 944209, Sacramento, CA 94244-2090, or by email at fgc@fgc.ca.gov. Pursuant to FGC Section 7852.2(d), your written appeal must be received within 60 days of the date of this letter. The Commission, upon consideration of the appeal, may grant the renewal of the SVP. If the Commission grants the renewal, it shall assess the applicable late fees, which amount to \$5,773.27. 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

Enclosure

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

Ms. Ruth Flores
California Department of Fish and Wildlife
Sacramento, CA

December 2, 2019

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

EMAIL: FGC@FGC.CA.GOV

Re: APPEAL OF DENIAL OF REINSTATEMENT OF
SVP #SA0616 FOR F/V JUDY S (FG23512)

Commissioners:

I am hereby requesting an appeal of your OCTOBER 24, 2019 Notice of Denial for Reinstatement of Salmon Vessel Permit, Permit Number SA0616.

When I purchased the F/V JUDY S in January, 2015, there was an SVP #FG23512 attached to the vessel. The prior owner of the permit, Don Jacobs, was required to transfer the permit as a condition of the sale of the F/V Judy S.

When I realized that I had not received any information in regards to the transfer, I contacted Don Jacobs to determine if he had transferred the permit to my name.

Unfortunately, during this time period Don Jacobs lost his son to a fishing accident and was unable to effectively assist me in the transfer in a timely fashion. Once we were able to coordinate with Don Jacobs in regards to the transfer, it was discovered that the permit was still in the name of David Suggs, the original owner. Mr. Suggs was very helpful in effectuating the transfer.

What caused additional concern and delay was the fact that the Fish and Game Commission was sending mail addressed to me to Mr. Suggs, or an old address of mine. This was in spite of the fact that I had on numerous times provided the commission with my correct mailing address. A recent example: The letter informing me of the denial is addressed to me, at my correct P.O. Box, but instead of Chinook, WA, it was addressed to Tacoma, WA. We did not receive this letter but instead had to call the commission to have them email the letter to my attention. These address delays have caused significant problems for me in obtaining the efficient transfer of the Salmon Permit.

I ask that you grant the appeal of the denial, reverse the denial and allow me to pay the fees due for reinstatement of the permit.

If you have any questions or concerns, please do not hesitate to contact me at 1-[REDACTED] or [REDACTED]. Thank you for your attention to this matter.

Sincerely,

William Rehmke

Cc:



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



March 19, 2020

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

Re: *In the Matter of William Rehmke*

Dear Commissioners:

This letter is in response to William Rehmke's request to appeal the Department of Fish and Wildlife's ("Department") denial of his request to renew his Salmon Vessel Permit, #SA0616 ("SVP"). The SVP was last valid during the 2016-17 fishing year. Mr. Rehmke submitted his appeal request on December 2, 2019. The Department will not be participating in this appeal and accordingly, does not object to the renewal of the SVP for the 2020-2021 fishing year, provided that he pays all applicable fees.

The fees that Mr. Rehmke 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 **\$5,773.27** plus any required fees for the 2020-2021 fishing year.

If you have any questions please contact me at the address above or by e-mail at David.Kiene@wildlife.ca.gov.

Sincerely,

DocuSigned by:

0254C8AA9A1D45E...

DAVID KIENE
Senior Staff Counsel

Cc: William Rehmke