

STAFF SUMMARY FOR FEBRUARY 8-9, 2023

Executive Session**Today's Item**Information Action

Executive session will include four standing topics:

- (A) Pending litigation to which the Commission is a party
- (B) Possible litigation involving the Commission
- (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, the Commission will call a recess and reconvene in a closed session pursuant to the authority of California Government Code subsections 11126(a), (c)(3), and (e)(1). The Commission will address four items in closed session:

(A) Pending litigation to which the Commission is a party

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

(B) Possible litigation involving the Commission**(C) Staffing**

For details about staffing, see the executive director's report under Agenda Item 8(A) for today's meeting.

(D) Deliberation and action on license and permit items

- I. *Consider the proposed decision in Agency Case No. 15ALJ07-FGC, the accusation filed against Aaron Lance Newman regarding revocation of Newman's sport fishing and hunting privileges*

The Department filed an administrative accusation against Aaron Lance Newman alleging that violations of the California Fish and Game Code merited revocation of Newman's sport fishing and hunting privileges. Newman filed a notice of defense with the Commission seeking a hearing.

Commission staff referred the case to the Office of Administrative Hearings (OAH), and OAH conducted a hearing. After the hearing, OAH submitted a proposed decision to the Commission recommending revoking Newman's sport fishing and hunting privileges. On June 20, 2018, the Commission adopted the proposed decision as its final decision.

Newman file a petition for a writ of mandate in Sacramento Superior Court challenging the Commission's decision. The Court entered an order setting aside the Commission's decision "because the [Commission's] Decision was based on an

STAFF SUMMARY FOR FEBRUARY 8-9, 2023

incomplete administrative record and thus incapable of meaningful review by the Court." Consistent with the writ, effective January 8, 2021, the Commission issued an order and notice of non-adoption of proposed decision, rejecting the original proposed decision and remanding the matter back to OAH to either reconstruct the missing elements of the record or conduct another hearing. On November 17, 2022, OAH conducted a hearing on the merits. OAH transmitted a proposed decision; the proposed decision finds the record supports imposing discipline and recommends revocation of Newman's sport fishing and hunting privileges (Exhibit 1).

In reaction to the proposed decision, the Department submitted a letter to the Commission urging it to adopt the proposed decision (Exhibit 2).

Significant Public Comments

A commenter expresses a belief that Newman is a good member of the local community and requests that the Commission consider extending Newman's hunting and fishing privileges (Exhibit 3).

Recommendation

FGC staff: (D)I. Adopt the proposed decision for Agency Case Number 15ALJ07-FGC.

Exhibits

1. [Proposed decision regarding the Newman accusation, received December 21, 2022](#)
2. [Letter from the Department to the Commission, received January 10, 2023](#)
3. [Letter from Jim Thomas to the Commission, received January 23, 2023](#)

Motion

Moved by _____ and seconded by _____ that the Commission adopts the proposed decision for Agency Case No. 15ALJ07-FGC, regarding revocation of Aaron Lance Newman's sport fishing and hunting privileges, in its entirety.

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

In the Matter of the Accusation Against:

AARON LANCE NEWMAN, Respondent

Agency Case No. 15ALJ07-FGC

OAH No. 2017100816.1

PROPOSED DECISION

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 17, 2022, from Sacramento, California.

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

Manny Daskal, Attorney at Law, represented Aaron Lance Newman (respondent), who was present throughout the hearing.

Evidence was received, the record closed, and the matter submitted for decision on November 17, 2022.

FACTUAL FINDINGS

Jurisdictional and Procedural History

1. The Department prepares and issues all licenses, permits, tags, reservations, and other entitlements authorized by the Fish and Game Code.¹ (§ 1050, subd. (a).) For several years, including 2012, respondent held sport fishing and hunting licenses from the Department.

2. On September 28, 2015, complainant filed the Accusation seeking to revoke respondent's sport fishing and hunting license and permit privileges based on his October 2014 criminal convictions for violating multiple sections of the Fish and Game Code and its associated regulations in 2012. An ALJ with OAH held a hearing in March 2018 and issued a proposed decision revoking respondent's license and permit privileges in May 2018. On June 20, 2018, the Fish and Game Commission (Commission)² adopted the proposed decision as its own. Respondent subsequently appealed to the Superior Court of California, County of Sacramento, via a Writ of Mandate (Writ).

¹ All statutory references are to the Fish and Game Code, unless otherwise specified.

² The Commission is the entity authorized to suspend or revoke respondent's hunting or sport fishing license or permit privileges under these circumstances. (Cal. Code Regs. tit. 14, § 745.5, subd. (a).)

3. On October 23, 2020, the Court granted respondent's Writ and set aside the Commission's decision "because the Order of Decision was based on an incomplete administrative record and thus incapable of meaningful review by the Court." Pursuant to the Writ, effective January 8, 2021, the Commission issued an Order and Notice of Non-adoption of Proposed Decision rejecting the original proposed decision and remanding the matter back to OAH to either reconstruct the missing elements of the record or conduct another hearing on the merits. In March 2022, OAH received the Commission's remand packet and scheduled a hearing. This hearing followed.

Respondent's Convictions

4. On October 29, 2014, in the Superior Court of California, County of Humboldt, case number CR1302281, respondent was convicted, on his guilty plea, of violating Code sections 1053.1, subdivision (a) (unlawfully obtaining more than one license, permit, reservation, or other entitlement of the same class, or more than the number of tags authorized by statute or regulation for the same license year) and 1054, subdivision (a) (submitting false, inaccurate, or otherwise misleading information on any application or other document offered or otherwise presented to the Department for any purpose, including, but not limited to, obtaining a license, tag, permit, or other privilege or entitlement), and California Code of Regulations (CCR), title 14, section 29.16, subdivision (b) (unlawfully possessing untagged abalone), all misdemeanors. The Court suspended imposition of sentence and placed respondent on informal probation for three years with conditions including that he complete 250 hours of community service; pay fines, fees, and restitution; and not obtain sport fishing or hunting licenses during probation.

Department Investigation Leading to the Convictions

5. Fishers and hunters licensed by the Department are subject to several laws and regulations designed to protect and preserve the State's natural environment and resources, including game animals. In 2012, one such law limited the number of abalone a Department licensee could collect. Fishers were permitted to collect up to 24 abalone, which they were required to track on a report card issued by the Department. A fisher who lost the report card could apply to replace it by completing an affidavit stating, under penalty of perjury, that the original card was lost and noting how many abalone were listed on the lost card.

6. Game Wardens are sworn peace officers who help enforce the Department's laws and regulations relating to the protection of fish and game. (§ 878.) In November 2012, while investigating a different matter, Warden Don Powers noticed that respondent had applied for a replacement abalone report card each year between 2003 and 2012, including twice in 2006. He found this unusual and told Warden Matthew Wells about it.

7. Warden Wells investigated the matter and reviewed respondent's affidavits. He also reviewed respondent's other license activity and discovered that respondent had applied for and received a duplicate deer tag in 2012. As of 2012, deer hunters could apply to the Department for tags to hunt deer in different regional zones within California. Applicants were eligible to receive one tag in each of two different zones. Each tag authorized the hunter to kill one deer in the designated zone. After killing a deer, the hunter was required to fill in certain information on the tag, such as the date, time, and location of the kill. A hunter who lost a deer tag could apply to replace it by completing an affidavit stating, under penalty of perjury, that the original tag was lost and promising to return it to the Department if found.

8. In April 2012, respondent received a deer tag for zone B. In June 2012, he received a deer tag for zone X3B. On September 2, 2012, he killed a deer in zone B and completed the associated tag. On September 10, 2012, respondent applied for and received a replacement deer tag for zone B. On October 21, 2012, he killed a deer in zone X3B and completed the associated tag. He never returned his duplicate tag for zone B to the Department.

9. Based on respondent's applications for replacement abalone report cards and deer tags, Warden Wells suspected respondent was submitting false information to the Department. As a result, in late November 2012, Warden Wells and four other Wardens served and executed a search warrant at respondent's house. While there, they found, among other things, three untagged abalone out of their shells.

10. Based on the findings of his investigation, Warden Wells completed an arrest/investigation report. Warden Powers and Warden AJ Bolton also completed supplemental arrest/investigation reports. Based thereon, the Department referred the matter to the Humboldt County District Attorney's Office for further investigation and prosecution. Warden Wells testified at hearing consistent with his report.

Respondent's Evidence

11. Respondent has been a commercial fisher for approximately 25 years and belongs to several commercial fishing and environmental advocacy groups. At hearing, he denied any wrongdoing.

12. Respondent testified that each of his affidavits for replacement abalone report cards between 2003 and 2012 were legitimate. The originals were either lost or stolen. He also noted that he never took more abalone than permitted.

13. Respondent also testified that he obtained a duplicate deer tag for zone B in 2012 accidentally. He had misplaced his tag for zone X3B and intended to get that tag replaced. However, the Department employee who processed his application misunderstood and wrote the wrong information on the form. Respondent did not read it carefully before signing it. He subsequently found his original tag for zone X3B, which he completed when he killed a deer in that zone. He did not return the duplicate tag for zone B to the Department because he "didn't take it as seriously as [he] should've."

14. Finally, respondent acknowledged that he had three untagged abalone in his freezer when the Wardens searched his house but noted that they were untagged because they were out of their shells. The shells were still tagged and near the freezer. He did not know it was a problem to store abalone that way and believes it is common to do so in the local fishing community.

15. Respondent has completed the terms of his criminal sentence and his probation is over. He currently holds sport fishing and hunting licenses from the Department and believes revoking them would be unduly punitive. He argued that if he had known the Department could revoke his sport fishing and hunting licenses, he would not have pled guilty in his criminal case.

Analysis

16. Pursuant to CCR, title 14, section 745.5, subdivision (a), the Commission can suspend or revoke a person's hunting or sport fishing license or permit privileges if three conditions are met: (1) the person is convicted of violating any provision of the Code or its associated regulations; (2) the Commission complies with the hearing

procedures specified in CCR, title 14, section 746; and (3) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly.

17. It is undisputed that respondent was convicted of violating two Code sections and one CCR section related to fish and game. The Commission has thus far complied with CCR, title 14, section 746. Consequently, the only factor to determine is whether respondent committed the acts underlying his convictions intentionally, knowingly, or recklessly. The Department established that he did.

18. Respondent has been a commercial fisher for more than two decades. He was also a recreational hunter and fisher from at least 2003 through 2012 and belongs to multiple commercial fishing and environmental advocacy groups. Based on that experience, respondent knew or should have known how to comply with the laws and regulations that governed Department licensees. Nevertheless, he committed three crimes related to his hunting and fishing activities. Under these circumstances, the evidence established that respondent's criminal actions were intentional, knowing, or reckless.

19. Respondent's explanations were unpersuasive, and his testimony was biased by his own self-interest. (Evid. Code, § 780, subd. (f).) He denied wrongfully obtaining any duplicate abalone report cards and insisted his originals were lost or stolen. He denied wrongfully obtaining a duplicate deer tag from the Department and instead blamed Department personnel for completing the form inaccurately. He also denied submitting false information to the Department. Further, he explained that his abalone were untagged only because he was storing them outside their nearby tagged shells.

20. Despite his explanations, respondent's convictions conclusively establish that he engaged in unlawful conduct. Respondent cannot impeach his convictions. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 [proof of a conviction "stands as conclusive evidence of [his] guilt of the offense charged".]) His attempts to do so undermined his credibility and his claims of rehabilitation. Specifically, because respondent does not believe he behaved unlawfully, it is unclear how he would avoid similar misconduct in the future. "Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation." (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent has not accepted full responsibility for his actions.

21. Finally, respondent argued that revoking his sport fishing and hunting licenses would be unduly punitive. However, the laws and regulations that govern Department licensees are designed not to punish errant licensees, but to protect the fish and wildlife of California. (§§ 1000, 1017, subd. (a).) As such, revoking respondent's sport fishing and hunting license and permit privileges would not be additional punishment for his criminal conduct, but rather a collateral consequence of his convictions. (*Corley v. Dept. of Motor Vehicles* (1990) 222 Cal.App.3d 72, 77-78; *In re Brown* (1995) 12 Cal.4th 205, 217.)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof in an administrative hearing is on the party making the charges, here the Department. (*Hughes v. Bd. of Architectural Exam'rs* (1998) 17 Cal.4th 763, 789, fn. 9.) Because no law requires otherwise, and this case does not involve discipline of a professional license, the standard is proof by a preponderance

of the evidence. (Evid. Code, § 115; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) This standard requires evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Causes for Discipline

2. The Commission may suspend or revoke a person's hunting or sport fishing license or permit privileges if it establishes that the person was convicted of a violation of any provision of the Code or its associated regulations; the Commission complies with the procedures specified in CCR, title 14, section 746;³ and the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly. (Cal. Code Regs., tit. 14, § 745.5, subd. (a).)

3. As explained in Factual Finding 4, respondent was convicted of violating Code section 1053.1, subdivision (a) (unlawfully obtaining more than one license, permit, reservation, or other entitlement of the same class, or more than the number of tags authorized by statute or regulation for the same license year). As explained in Factual Findings 16 through 18, respondent committed this crime intentionally, knowingly, or recklessly. Cause therefore exists to revoke or suspend his sport fishing

³ This section identifies "the minimum safeguards to afford each . . . licensee . . . procedural and substantive due process when the commission considers revocation . . . for a license or permit including hunting and sport fishing license or permit privileges." Neither party argued this section was violated, and the ALJ concludes the Commission has thus far has complied with CCR, title 14, section 746.

and hunting license and permit privileges pursuant to CCR, title 14, section 745.5, subdivision (a), for violating Code section 1053.1.

4. As explained in Factual Finding 4, respondent was convicted of violating Code section 1054, subdivision (a) (submitting false, inaccurate, or otherwise misleading information on any application or other document offered or otherwise presented to the Department for any purpose, including, but not limited to, obtaining a license, tag, permit, or other privilege or entitlement). As explained in Factual Findings 16 through 18, respondent committed this crime intentionally, knowingly, or recklessly. Cause therefore exists to revoke or suspend his sport fishing and hunting license and permit privileges pursuant to CCR, title 14, section 745.5, subdivision (a), for violating Code section 1054, subdivision (a).

5. As explained in Factual Finding 4, respondent was convicted of violating CCR, title 14, section 29.16, subdivision (b) (unlawfully possessing untagged abalone). As explained in Factual Findings 16 through 18, respondent committed this crime intentionally, knowingly, or recklessly. Cause therefore exists to revoke or suspend his sport fishing and hunting license and permit privileges pursuant to CCR, title 14, section 745.5, subdivision (a), for violating CCR, title 14, section 29.16, subdivision (b).

Appropriate Discipline

6. The Commission may either suspend or revoke an individual's license and permit privileges. As explained in Factual Findings 19 through 21, when all the facts are considered, revoking respondent's sport fishing and hunting license and permit privileges is appropriate to protect California fish and wildlife.

ORDER

Respondent Aaron Lance Newman's sport fishing and hunting license and permit privileges are REVOKED.

DATE: December 16, 2022


Sean Gavin (Dec 16, 2022 13:17 PST)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 9, 2023

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

Adoption of Proposed Decision, *In the Matter of the Accusation Against Aaron Lance Newman* (Agency Case No. 15ALJ07-FGC, OAH No. 2017100816.1)

Dear Commissioners:

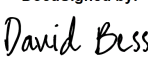
I respectfully request that you adopt the entire Proposed Decision issued *In the Matter of the Accusation Against Aaron Lance Newman* (Agency Case No. 15ALJ07-FGC, OAH No. 2017100816.1; "Proposed Decision"), which proposes revoking Mr. Newman's sport fishing and hunting license privileges.

In recommending the revocation of Mr. Newman's sport fishing and hunting privileges, Administrative Law Judge ("ALJ") Sean Gavin found that Mr. Newman committed all violations described in the Accusation intentionally, knowingly, or recklessly as required by CCR, title 14, section 745.5. In addition, ALJ Gavin made findings regarding Mr. Newman's credibility and likelihood to reoffend.

As ALJ Gavin noted in paragraph 19, page 7 of the proposed decision, Respondent's explanations were unpersuasive, and his testimony was biased by his own self-interest. He continues to deny wrongfully obtaining any duplicate abalone report cards and insists his originals were lost or stolen. He continues to deny wrongfully obtaining a duplicate deer tag from the Department and instead blames Department personnel for completing the form inaccurately. ALJ Gavin notes in paragraph 20 that because respondent does not believe he behaved unlawfully it is unclear how he would avoid similar misconduct in the future. The Department of Fish and Wildlife agrees with ALJ Gavin's conclusion on page 8, paragraph 20 that Respondent has not accepted full responsibility for his actions.

Accordingly, I request that the Commission adopt this Proposed Decision in its entirety.

Sincerely,

DocuSigned by:

A8646E90CBC140C...

DAVID BESS
Deputy Director
Chief of the Law Enforcement Division

Cc: Many Daskal

January 11, 2023

2023 JAN 23 AM 10: 59

California Fish and Game Commission
PO Box 944209
Sacramento, CA 94244-2090

Dear Commissioners,

My name is Jim Thomas. I currently work as a Community Services Coordinator for the City of Eureka. I am writing on behalf of Aaron Newman. I hope you will take the time to thoughtfully consider the following message regarding Aaron Newman's hunting and fishing privileges.

I understand there were some mistakes made in Aaron's past hunting and fishing practices. I did not know Aaron at the time, however as someone who has become a friend of his in the past three years, he has expressed learning from mistakes made previously. Aaron is a true sportsman who respects the process it requires to hunt and fish within the laws. I have learned a lot from him about how to find the information regarding hunting and fishing laws. For example; when the rivers are open and closed, where and when you have to use barbless hooks, why you can't use lead bullets, assuring that you don't shoot before the time the law requires, limits and correct species of ducks you can legally hunt, limits and descriptions of fish you are allowed to keep and descriptions of fish you are not allowed to keep, just to name a few. On numerous occasions he has raised my awareness on hunting and fishing laws, because he has learned the hard way. That has made me a better sportsman and the fact that he was able to teach me some of these things, he is creating a better community of hunters and fishermen. He respects the land, and even takes the time to pick up trash if he sees any while we have hunted and fished together during the time he has had his licenses.

To further my thoughts on Aaron, I see him as a generous selfless community member. He goes above and beyond his duties as a Humboldt Bay Harbor Commissioner. He follows his commercial fishing regulations to a T. He takes the time to volunteer and help others around him. He has even donated and captained a free ride for a group of kids I work with at the City of Eureka on the Historic Madaket Boat.

I hope you will consider extending Aaron's fishing and hunting privileges, as he has learned a lot and has changed his habits to be a prime example of how to respectfully hunt and fish within the laws.

Sincerely,
Jim Thomas

