

Staff Summary for December 10-11, 2025

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

Executive session includes 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 Section 11126, subdivisions (a), (c)(3) and (e)(1). The Commission will address four items in closed session: Pending litigation, possible litigation, staffing, and license and permit items.

(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. At any meeting, during executive session, the Commission may take action related to pending litigation.

(B) Possible Litigation Involving the Commission**(C) Staffing**

For details about staffing, see the executive director's report under Agenda Item 6(A) for today's meeting.

(D) Deliberation and Action on License and Permit Items

- I. Consider the petition in Agency Case Number 25ALJ31-FGC requesting reinstatement of Michael Volaski's fishing license and lobster operator permit.

The Commission received a Petition for Reinstatement (Exhibit 1). The petition was filed by legal counsel on behalf of the petitioner, Michael Volaski, and seeks reinstatement of Volaski's "commercial fishing license and accompanying permits." The Commission previously suspended Volaski's commercial fishing license and lobster operator permit for a period of five years, effective October 27, 2023, by adopting a proposed decision from the Office of Administrative Hearings (exhibits 2 and 3).

Staff provided Michael Volaski and the Department with notice that the petition for reinstatement would be considered by the Commission at today's meeting. After the

Staff Summary for December 10-11, 2025

notice, the Department and Michael Volaski provided written argument (exhibits 4 and 5).

Pursuant to Government Code, Section 11522, after allowing the parties an opportunity for oral argument, the Commission may choose whether to reinstate the license and permit.

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

Commission staff: Hear argument from any of the parties that wish to address the Commission in open session, and then deliberate in closed session on item D.1.

Exhibits

1. [Letter from Justin Robinson regarding Michael Volaski request for license and permit reinstatement, dated June 23, 2025](#)
2. [Commission decision, dated October 20, 2023](#)
3. [Proposed decision, dated August 4, 2023](#)
4. [Letter from the Department, dated December 1, 2025](#)
5. [Petitioner's written arguments, dated December 1, 2025](#)

Motion

Options will be discussed during closed session regarding Agency Case Number 25ALJ31-FGC.



UNLOCK LEGAL[®]
A Professional Law Corporation

Received
California Fish and Game Commission
7/7/25

June 23, 2025

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

Re: Michael Volaski; Reinstatement

To Whom It May Concern:

Our office represents Mr. Michael Volaski in regard to this Petition for Reinstatement before the Fish and Game Commission.

It is our hope and prayer that Mr. Volaski's license(s) and permit(s) will be reinstated to allow for his continued work in the field for which he is so passionate. Please consider the following letter and its accompanying attachments as a formal request for said reinstatement under Government Code Section 11522.

Please note, the documents initially submitted contain our office's old address. We have moved to a new office, and ask that any information related to this matter be sent to the address listed below.

UNLOCK LEGAL, APLC
360 E. 1st St. #61, Tustin, CA 92780

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Justin Robinson, Esq.

Professional License Defense
Justin@UnlockLegal.com | www.UnlockLegal.com
360 E. 1st St. #61, Tustin, CA 92780
949.988.4444



UNLOCK LEGAL[®]

A Professional Law Corporation

January 21, 2025

California Department of Fish and Wildlife
PO Box 944209
Sacramento, CA 94244-2090

Re: Michael Volaski; Reinstatement

To Whom It May Concern:

Our office represents Mr. Michael Volaski in regard to this Petition for Reinstatement before the California Department of Fish and Wildlife and Fish and Game Commission.

By signing below, Mr. Volaski affirms our representation of him in this matter.

Michael A. Volaski

Date: 01 / 20 / 2025

MICHAEL VOLASKI

Given the time he has already served on suspension, his previous compliance, and the unique impact this suspension has had on his family, we ask that the Department consider and ultimately grant this Petition for Reinstatement, pursuant to Government Code Section 11522.

It is our intention, with the attached letter and supporting documentation, to demonstrate that Mr. Volaski holds the requisite skill, judgment, and integrity necessary to hold the applicable license and permits in the state of California.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Justin Robinson, Esq.

Criminal & Professional License Defense
Justin@UnlockLegal.com | www.UnlockLegal.com
137 S. Prospect Ave, Tustin, CA 92780
949.988.4444

Doc ID: 73b72ae430aa7e6c138ec9fd800fe8dc46aab82c

January 21, 2025

California Department of Fish and Wildlife
PO Box 944209
Sacramento, CA 94244-2090

Re: Michael Volaski; Reinstatement
Suspended License No. L03025; All Suspended Permits

To Whom It May Concern:

Our office has been retained to assist with Mr. Mike Volaski in regard to the reinstatement of his license and permits with the Department of Fish and Wildlife.

1. STATEMENT OF FACTS

Mr. Volaski received his commercial fishing license and accompanying permits on January 1, 1984. From that date to the date of his eventual suspension, for 40 consecutive years, Mr. Volaski maintained and timely renewed his credentials with distinction. As a member of a multi-generational family of California fishermen, Mr. Volaski took pride in his work, and endeavored to comply with all state regulations and standards.

On November 1, 2022, an Accusation was filed against Mr. Volaski alleging violations of California Code of Regulations, title 14 (CCR), section 122, subdivision (n); section 122, subdivision (o)(1); and Fish and Game Code section 8252.

Mr. Volaski defended himself against these claims and ultimately went before an Administrative Law Judge, where he sought to demonstrate his continued fitness for licensure. The Judge elected to impose a 5-year suspension in lieu of the Department's requested 10-year suspension, citing the latter as being excessive and unduly harsh.

With the suspension of his license and permit(s), Mr. Volaski has been struggling financially and personally. Mike Jr. has been helping his dad make payments for an SBA COVID-19 EIDL Government Loan for \$240,000 taken out for his fishing business in 2021. In addition, he is paying for Mike's boat/slip fee and storage yard of fishing gear.

Six months after the suspension, Mr. Volaski was diagnosed with [REDACTED] and has been fighting this diagnosis accordingly. However, without the stable flow of income from what was once a stable career, Mr. Volaski has grown concerned about what the future holds with regard to his well-being, and whether this suspension may operate as a de facto revocation.

It is therefore our request that Mr. Volaski's license and permits be reinstated accordingly.

2. ARGUMENT

a. Generally

We have prepared this letter to lay out our formal legal argument(s) justifying reinstatement as an appropriate and justified remedy in this matter. California Government Code Section 11522 provides the following:

"A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty."

In the absence of additional or contradictory provisions for any specific department, board, or agency, the above code section governs the procedure of a reinstatement. Thus, as the Department of Fish and Wildlife and the Fish and Game Commission do not have an alternative statute limiting the use of reinstatement in suspension cases, this remedy is both justified and specifically required when pursuing relief from said suspension.

b. Interests of Justice

Reinstatement is, as a matter of course and law, an opportunity for a disciplined individual to demonstrate meaningful rehabilitation, personal growth, and substantive professional development, in contrast to the information and issues outlined in their original disciplinary action. In this case, it is the intention and goal of Mr. Volaski to demonstrate this growth and development.

In her decision imposing a suspension on Mr. Volaski, Administrative Law Judge Cindy Forman found that, "[a]lthough respondent recently changed his fishing practices, that conduct has not been sustained over an extended period. It therefore is too soon to evaluate whether respondent's commitment to reform is sincere, particularly considering respondent's failure to abide by his promise to the court to closely supervise and train his employees and his strong incentive to obey the law at least while criminal charges stemming from the December 2021 incident are pending against him."

Thus, this reinstatement effort is further justified by Judge Forman's own conclusion that additional time rehabilitating is necessary to justify continued licensure and permitting. Although Mr. Volaski continued to fish the rest of the '21-'22 season, the entire '22-'23 season, and the

opening of the '23-'24 season with multiple boardings by CDFW Officers, without any incidents, we are now one year removed from the initial suspension, and Mr. Volaski is well-suited to demonstrate his continued efforts to learn and grow from this experience.

3. MITIGATION AND REHABILITATION

In support of his efforts to demonstrate his rehabilitation and claims of personal and professional growth, Mr. Volaski has gathered various forms of mitigation for the Department and Commission's consideration. We have included this information below, along with our description of Mr. Volaski's efforts in the context of various factors of rehabilitation.

a. Nature And Severity Of The Underlying Misconduct

It is alleged Mr. Volaski left lobster traps in the water after the close of the 2010-2011 lobster fishing season. He pled guilty to one wired-open unbaited lobster trap. In 2013, he was cited for placing six lobster traps within 750 feet of the Port Hueneme South Jetty. This case was dismissed by the Ventura County Superior Court as it was determined that the area was undisclosed. Lastly, he was cited for possessing four undersized lobsters in December 2019, 11 undersized lobsters in October 2021, and nine lobsters in December 2021 with no intention of landing them until he had measured them.

Mr. Volaski recognizes that any one of these transgressions would naturally implicate the judgment and qualifications of the licensee/permitholder in question. He further agrees that any violation of law, standards, regulations, or norms justifies careful scrutiny.

However, we wish to note that, over the course of ten years, such transgressions are limited to these specific instances. Mr. Volaski has an extensive career working as a fisherman. He has developed a reputation for his integrity, good character, and intelligent disposition. Thus, while the allegations are concerning, we assert Mr. Volaski's good nature, positive intentions, and well-meaning efforts should be weighed against said violations.

b. Time Elapsed Since Commission Of The Act(s)

The most recent allegation of misconduct occurred in 2021. Thus, it has been over three years since the alleged misconduct.

c. Subsequent Disciplinary Or Legal Actions

Not applicable.

d. Whether The Licensee/Permitholder Engaged In The Original Misconduct Intentionally Or Maliciously

There is no evidence of any malicious or ill-conceived intent with regard to the original misconduct. We understand the Department found unconvincing the arguments advanced by Mr. Volaski in his original hearing regarding the incident(s) in question. However, as no benefit had

resulted from any of the misconduct and Mr. Volaski has not given any indication that he sought to purposefully subvert Department regulations, we assert that no conclusion can be drawn regarding his intent in this situation.

e. Compliance With Disciplinary Or Other Legal Action(s)

Mr. Volaski has fully complied with the suspension order imposed against him.

f. Additional Considerations

The purpose of a reinstatement effort is not to relitigate the underlying circumstances giving rise to the original discipline. On the contrary, any reinstatement inherently implicates and considers the actions taken subsequent to the misconduct.

In this case, Mr. Volaski has been without his license/permit since October 2023. In that time, he has complied with the Department's order(s), while battling [REDACTED] and attempting to provide for his family. Mr. Volaski's father and son are both active and licensed fishermen, with whom he is unable to join due to this suspension.

Given Mr. Volaski's age and health condition, we ask for additional leniency and consideration from the Department with regard to this suspension and its substantive impact on his mental, emotional, and physical health. Mr. Volaski is passionate about his career as a fisherman. He takes tremendous pride in his work and has been struggling without this important activity in his life.

g. Likelihood Of Recurrence

The likelihood of recurrence is minimal. Not only does Mr. Volaski have a career defined by legal compliance and cooperation, but the significant impact of the current penalty thus far imposed has adequately deterred future transgressions. Throughout his entire 40-year career working as a commercial fisherman, Mr. Volaski has been convicted only one time for one wired-open unbaited trap in 2011. He always cooperated with the Department on any matters relating to or in connection with his fishing duties.

While on suspension, Mr. Volaski has fully complied with the terms of his suspension, and has demonstrated the remorse and rehabilitation required to justify future license and permitting.

h. Mitigation Evidence

In support of this reinstatement effort and to demonstrate the sincerity of his remorse, Mr. Volaski has prepared and submitted various mitigation documents for the Department's review and consideration.

Specifically, Mr. Volaski has prepared a personal statement for the Department's review and consideration. This statement outlines the primary basis for Mr. Volaski's request. He describes

the original circumstances which led to the discipline in question and also why he should be trusted to return to his career. (Please see **Attachment A** for "Personal Statement").

In addition, Mr. Volaski has gathered and submitted various character reference letters for the Department's review and consideration. These letters were written by individuals who know Mr. Volaski well and can accurately and meaningfully attest to his character. We ask that these letters be considered as evidence of mitigation. (See **Attachment B** for "Character Reference Letters").

4. CONCLUSION

The purpose of disciplinary actions by administrative bodies is not to punish, but to protect the public by discharging those practitioners who are dishonest, immoral, disreputable or incompetent. (*Borror v. Dep't of Investment*, 15 Cal. App. 3d 531, 540 (1971); *Fahmy v. Medical Board of California*, 38 Cal.App.4th 810, 817 (1995)).

Mr. Volaski has demonstrated the rehabilitative effort sufficient and necessary to justify his return to his fishing career. There exists no legitimate basis on which to conclude Mr. Volaski is dishonest, immoral, disreputable, or otherwise incompetent such that continued suspension is an appropriate course of action at this point. We ask that he be allowed to resume his career and passion accordingly.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

UNLOCK LEGAL, APLC





A handwritten signature in dark ink, appearing to read "Justin Robinson", written in a cursive style.

Justin Robinson, Esq.

Title	Updated Volaski - Reinstatement Support Letter.docx.pdf
File name	Updated%20Volaski...20Letter.docx.pdf
Document ID	73b72ae430aa7e6c138ec9fd800fe8dc46aab82c
Audit trail date format	MM / DD / YYYY
Status	● Signed

This document was requested from app.clio.com

Document History

 SENT	01 / 21 / 2025	Sent for signature to Michael Volaski
	01:14:28 UTC	from justin@unlocklegal.com IP: 98.153.196.2
 VIEWED	01 / 21 / 2025	Viewed by Michael Volaski
	01:33:01 UTC	IP: 23.240.51.211
 SIGNED	01 / 21 / 2025	Signed by Michael Volaski
	01:35:55 UTC	IP: 23.240.51.211
 COMPLETED	01 / 21 / 2025	The document has been completed.
	01:35:55 UTC	



October 29, 2024

To Whom It May Concern,

I am writing to provide a character reference for Mike Volaski, a man I have had the pleasure of knowing for many years. Mike's career speaks volumes about his integrity and dedication. With over 40 years as a fisherman and 31 years as a firefighter, Mike has demonstrated an unwavering commitment to his work, consistently maintaining an impeccable record for work ethic and honesty.

I first met Mike when I was just 10 years old, as my father worked alongside him. Over the years, I had the privilege of sharing many dinners with him at the fire station, and I can say with certainty that Mike has always been an exemplary human being—someone who leads by example, embodies integrity, and is deeply dedicated to his community.

In my professional capacity as an Oxnard Port Commissioner for over 14 years, I've had further opportunities to witness Mike's contributions to the local community. He is a man who doesn't just fulfill his duties but goes above and beyond to make a positive impact on those around him. Without reservation, I can speak to his outstanding character and dedication to serving others.

It is with the utmost confidence that I recommend Mike Volaski. His honesty, hard work, and integrity are unmatched, and he has earned the respect of everyone who knows him.

Sincerely,
Hon. Jason T Hodge
Oxnard Port Commissioner

333 Ponomo Street,
Port Hueneme, CA 93041 805-444-5223

To Whom it May Concern:

Sometimes words cannot capture the experiences we have. The injustice of a 5-year suspension imposed on Mike Volaski for his commercial fishing license and permits is one such experience. The harm this has caused is immeasurable and irreparable.

I implore you to read the letters of character reference written on his behalf. They are written by a renowned former fish and game marine enforcement warden/captain along the CA coast, the president of Ocean Defenders Alliance, a fish buyer, and the Honorable Oxnard Port Commissioner who happens to be the husband of Fiona Ma, CA State Treasurer, and he is the son of one of Mike's former Fire Captains with whom he still keeps in contact. All of these people have known Mike for decades.

Everyone that knows Mike is shocked at the extreme punishment of a 5-year suspension, not just of his license and lobster permit, but also his crab and salmon permits, and all fishing privileges. Mike is a stellar character of integrity. He attended parochial school, K-12, and considered being a priest. To this day, he rarely swears, and he has never used recreational drugs. He became a sworn Peace Officer in 1981, and from 1982-2007, he was a Firefighter and Fire Dept. Prevention Officer for the City of Oxnard. After his wife passed away from [REDACTED] he retired early to raise his young sons.

At the age of four, Mike learned how to check off lobster buoys for his dad on his commercial fishing boat. To this day, Mike's dad, who is now 89, still fishes! All three of Mike's brothers and some of their children are also involved in fishing and make their livelihoods at sea. One of Mike's brothers owns the two largest boats in the Channel Islands Marina. There is a placard of Mike's boat, called Capture, with lobster traps on the stern posted on a walkway outside a popular restaurant at the Channel Islands Marina. Mike's oldest son is also a commercial fisherman, and he is also a firefighter for the County of Los Angeles. The Volaskis are well known at the Channel Islands Marina not only as three generations of fishermen, but also three generations of firemen, as Mike's dad was a firefighter for the Beverly Hills Fire Department.

Mike worked for 20 years instructing and assisting anglers on sport fishing boats in So. CA until he began fishing commercially in 1984. In the 40 years that he fished commercially for lobster, crab, live fish, and salmon, he has been boarded hundreds of times. He has landed over 300,000 legal lobsters and returned over 16,000 undersized lobsters to their habitat. This data is logged.

In Mike's entire 40-year commercial career, he was convicted only once in 2011 for leaving an unfishable wired open lobster trap after the close of the season. He was unable to

retrieve the trap due to adverse weather which is documented. Retrieval time has since been extended.

Mike was 35 years into his lobster career when he was first cited for having undersized lobsters on this boat. His deckhand of 11 years mistakenly told Mike that all lobsters had been measured when they were boarded next to Anacapa Island. After the deckhand made the same error a second time, (at which time he was also cited), Mike let him go. It was unbelievable that the newly trained and licensed deckhand made the same error two years later. The circumstances were all similar in that they took place next to the lobsters habitat, (to which they were returned), by Anacapa Island. It is Mike's protocol to measure the lobsters a second time before they leave their habitat. He had not yet had a chance to do so each time they were boarded.

Mike has never landed an undersized lobster, nor has he ever considered doing so. He would not jeopardize his privilege to earn a living by fishing, a career he has dearly loved. He was accused of being a liar and of having a pattern of breaking the law. Three incidents in 40 years do not prove a pattern. He trained his deckhands. They acknowledged making the errors, and one of them was cited, but unlike Mike, they continue to work.

As mentioned, each incident took place next to Anacapa Island near the lobsters' habitat when they were boarded. Mike had not yet done the secondary measurement. These circumstances do not prove an intent to poach which the Fish and Game publicly accused Mike of doing.

This experience has truly caused so much pain for both Mike and me. The OAH Judge in her Proposed Order submitted to the commission prior to Mike's hearing stated: "A five-year suspension will have a deterrent effect on respondent as well as other licensees by way of example." While I understand that deterring bad actors from engaging in certain behaviors is important, this deterrent effect has a real and tangible effect on our lives.

During the three-day hearing, Mike was retried on each of his four former accusations. Mike's first three accusations were related to the one incident re: traps left out beyond the season in 2011 to which he was convicted by having one wired-open unfishable trap left after the season due to hazardous weather for the size of Mike's boat. The fourth accusation was completely dismissed and destroyed in the Ventura Co. Superior Court. The last accusation re: undersized lobsters in 2021 was still pending in the Ventura Superior Court when the Fish and Game enforced Mike's suspension.

If you spent a little time talking with Mike, you would soon get a feel for his character. When I met him four years ago, it was precisely his integrity that initially attracted me to him. After a few months of dating, I recalled thinking of a quote by Jack Nicholson in a movie when he

said to his new love, "You make me want to be a better man." It was funny to me, because Mike made me feel like I wanted to be a better woman. Of course, we wouldn't be together if our values weren't similar.

I graduated from Pepperdine University with a Master's Degree and elementary teaching credential. A native of Ventura, I have been on, in, or near the Pacific all my life. I, too, love the ocean and it grieves me that this extreme punishment put on Mike for something that he did not do or ever had any intention of doing prevents him, now at age [REDACTED], from enjoying his lifelong passion of fishing and being on the ocean. You have no idea how much it hurts him that he can't even be on the same boat with his father or son.

It has been over a year now since the suspension. Losing his income has placed an extreme financial hardship on him to repay the SBA COVID-19 Injury Disaster Loan he took out for \$240,000 for the business in 2021. Every day has felt like a battle. The stress over the unfairness, slander of his name, forced and premature retirement, and loss of income to repay the loan has been relentless. So much so that Mike was diagnosed with [REDACTED] in April. Since then, he has undergone surgery twice to [REDACTED]. He returns in December to be checked again as it is a highly [REDACTED]. And I, too, have unfortunately been hospitalized this year.

Please know that I greatly appreciate you reading this letter. I hope that it has helped to shed light on the unwarranted severity of a 5-year suspension imposed on a man who in all actuality did nothing wrong. Yes, he is Captain of his boat and takes responsibility for the safety of his crew and for working ethically. But he does not have control over what anyone else says or does. People make mistakes, and these errors were simply that. There was never an intention or effort made to fish illegally and land undersized lobsters. A year's suspension, lack of income to repay his loan, the public slander, and diagnosis of [REDACTED] have taken a tremendous toll on both our lives. I sincerely hope that you will help expedite the return of Mike's license and permits as soon as possible.

Thank you,

Claudia Moore

Losing his job may have going forward. Mike didn't need one. His problem was trusting another person to do their job. Based on my experience with boarding officers and some new wardens, I know how difficult that can be.

Based on my experience working Marine, my personal opinion is that it is not in the best interest of the resources, nor the Department, to revoke his permit. As I said, we need more like him, not fewer.

Respectfully,

Gene Martin,
Captain, DFG retired.



Nina Garcia <nina@unlocklegal.com>

Fw: Letter Character Reference

1 message

M [REDACTED]
To: Justin Robinson <justin@unlocklegal.com>

Fri, Nov 1, 2024 at 5:06 PM

----- Forwarded Message -----

From: Mike Volaski [REDACTED]
To: Mike Volaski [REDACTED]
Sent: Saturday, October 26, 2024 at 04:12:37 PM PDT
Subject: Fwd: Letter

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: October 25, 2024 at 4:28:10 PM PDT
To: Mike Volaski [REDACTED]
Subject: Letter

To Whom it may Concern,

I am a retired Fish and game Warden. I spent all but 2 years of my career working Marine Patrol, with better than half in Patrol Boats. I worked Ventura/Santa Barbara Counties beginning in 1973, then boats, starting in Ventura County, beginning in 1982. During my career I ran the Yellowtail, Albacore and Hammerhead. I patrolled the Northern LA county area to Central San Luis County, then later on, from the Mexican Border to San Francisco. During my tenure, we had more boardings, citations and seizures than any of the other patrol boats. My name is still known along the So Cal and Central Cal coastline.

During my career it was my pleasure to know Mike Volaski. I found him to be honest, hardworking and conscientious. I never knew him to intentionally violate any Fish and Game laws, nor did his name arise in discussions with other wardens as a violator. Mike is someone who didn't regard resources as something to be exploited, rather as something to sustain. Having commercial fished myself, I fully understand the pressures that drive some to cheat. Mike didn't fall into that group. And I never knew him to lie to me.

Essentially, the resources need more like Mike, not fewer. It has been my training and experience that "Leopards don't change their spots." To bring about that change, usually a significant emotional experience is involved. Clearly, the deckhand has not suffered one of those enough to change lax measuring habits.



**OCEAN
DEFENDERS
ALLIANCE**

Working for a debris free sea

Protecting and Restoring the Underwater World Since 2002

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Kurt Lieber

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Ray Hollowell
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Rex Levi
Walter Marti
Kim McCoy
John Milligan
Linda Nicholes
Julia S. Ransom
Glenn Roberts
Carla Robinson
Ken Kealoha Staples
Carol Boot Storie
Darlene Summers
Chuck Swift
Tom Weisel
Robert Wintner
Mike Wynd

Ocean Defenders Alliance
501(c)(3) nonprofit
#32-0065856

November 1, 2024

To whom it may concern.

I've know Mike Volaski since 2018. I run a non-profit organization that locates and removes abandoned fishing gear. Mostly lobster traps and nets.

Mike has been very supportive and helpful in helping me find this abandoned gear and then finding out who the owners are after I bring them back to the harbor.

While most fisherman have been reluctant to work with me, Mike doesn't hesitate. He is helping my organization keep our underwater world safe from the harm that can come from animals becoming entangled in the trap lines or being stuck in these traps.

He works well with people of varying backgrounds and expertise.

Feel free to call me if you want to find out more about Mike.

Sincerely,

Kurt Lieber
www.oceandefenders.org

714-875-5881



October 29, 2024

To Whom It May Concern,

I am writing to provide a character reference for Mike Volaski, a man I have had the pleasure of knowing for many years. Mike's career speaks volumes about his integrity and dedication. With over 40 years as a fisherman and 31 years as a firefighter, Mike has demonstrated an unwavering commitment to his work, consistently maintaining an impeccable record for work ethic and honesty.

I first met Mike when I was just 10 years old, as my father worked alongside him. Over the years, I had the privilege of sharing many dinners with him at the fire station, and I can say with certainty that Mike has always been an exemplary human being—someone who leads by example, embodies integrity, and is deeply dedicated to his community.

In my professional capacity as an Oxnard Port Commissioner for over 14 years, I've had further opportunities to witness Mike's contributions to the local community. He is a man who doesn't just fulfill his duties but goes above and beyond to make a positive impact on those around him. Without reservation, I can speak to his outstanding character and dedication to serving others.

It is with the utmost confidence that I recommend Mike Volaski. His honesty, hard work, and integrity are unmatched, and he has earned the respect of everyone who knows him.

Sincerely,
Hon. Jason T Hodge
Oxnard Port Commissioner

333 Ponomo Street,
Port Hueneme, CA 93041 805-444-5223

BEFORE THE FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL ANDREW VOLASKI

Respondent.

Case No. 22ALJ011-FGC

OAH No. 2023020848

Decision

The attached Proposed Decision is adopted by the California Fish and Game Commission as its Decision in the case referenced above with the following technical corrections, pursuant to Government Code Section 11517 and California Fish and Game Code Section 7857:

1. The second sentence of the Summary on page 3 of the Proposed Decision are revised to state “Complainant established respondent failed to timely retrieve one closed lobster trap and four open lobster traps in 2011, unlawfully set lobster traps in impermissible areas in 2013, and, in three instances during the period between 2019 and 2021, retrieved undersized lobsters in violation of the relevant statutes and regulations.” and
2. The third sentence of paragraph 17 on page 24 of the Proposed Decision is revised to read “His training was sporadic at best, and in December 2021 he exclusively relied on a single overcommitted deckhand to perform the measurements.”

This decision shall become effective the 27th day of October 2023.

IT IS SO ORDERED 10/20/2023.

DocuSigned by:

Eric Sklar

768676632433473...

Eric Sklar, President

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

In the Matter of the Accusation against:

MICHAEL ANDREW VOLASKI, Respondent.

Agency Case No. 22ALJ011-FGC

OAH No. 2023020848

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 22 through May 24, 2023.

Tatiana Filippova, Counsel, Department of Fish and Wildlife, represented complainant David Bess, Chief of the Law Enforcement Division for the Department of Fish and Wildlife (Department).

E. Michael Linscheid, Attorney at Law, represented respondent Michael Andrew Volaski.

The ALJ received testimony and documentary evidence at the hearing. During hearing, the ALJ amended the Accusation in response to complainant's unopposed motion, as follows: The dates identified in paragraph 30, lines 3 and 5, are changed from "December 7, 2021", to "December 17, 2021". (Exhibit 1, p. A19.)

At the end of the hearing, the ALJ left the record open until July 10, 2023, to allow the parties to file closing briefs. The parties timely filed their briefs and accompanying papers. Complainant's closing brief, request for official notice, declaration attaching precedential decisions, and reply brief are marked for identification as Exhibits 32, 33, 34, and 35, respectively. Respondent's opposition to complainant's request for official notice, the declaration in support of respondent's request for judicial notice of Exhibit J, the request for judicial notice of Exhibit J, and respondent's closing brief are marked for identification as Exhibits K, L, M, and N, respectively. The Declaration of Melissa Miller-Henson is marked for identification as Exhibit J.

After reviewing the exhibits in this matter, the ALJ noted the parties and the ALJ mistakenly withdrew respondent's Exhibit F because it appeared to be identical to complainant's Exhibit 9. However, Exhibit 9 is a Notice of Destruction issued by the Superior Court, County of Ventura, in case number 2011024496, on December 29, 2016, while Exhibit F is a Notice of Destruction issued by the Superior Court, County of Ventura, in case number 2013037306 on May 18, 2020, along with a court minute order reflecting the dismissal of case number 2020002607 on March 8, 2021. At hearing, the parties agreed that respondent was convicted in the first case and notices of dismissal had been filed in the other two cases. Accordingly, by her own motion, the ALJ admitted Exhibit F into evidence.

The ALJ closed the record and deemed the matter submitted on July 10, 2023.

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SUMMARY

Complainant seeks to suspend respondent's commercial fishing license (license) and lobster operator permit (LOP) for 10 years based on respondent's seven separate incidents of cited misconduct between 2011 and 2021 relating to the trapping of spiny lobsters in the Southern California protected marine area. Complainant established respondent failed to timely retrieve four closed lobster traps and one open lobster trap in 2011, unlawfully set lobster traps in impermissible areas in 2013, and, in three instances during the period between 2019 and 2021, retrieved undersized lobsters in violation of the relevant statutes and regulations. Given the passage of time and the absence of any evidence respondent repeated his earlier violations, a 10-year suspension based in part on those earlier violations is unduly harsh. While respondent has made some commendable efforts to change his conduct, those efforts are too recent to establish respondent's commitment to complying with California law and to protecting California's fisheries considering the number of violations. A five-year suspension of respondent's license and LOP therefore is warranted to protect public resources.

REQUEST FOR OFFICIAL NOTICE

Complainant requests the ALJ take official notice of 10 decisions designated as precedential by the Fish and Game Commission (Commission) under Government Code section 11425.60, subdivision (b). (Exhibit 34.) That subdivision provides that an agency "may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur."

Respondent requests the ALJ take judicial notice of the declaration of Commission Executive Director Melissa Miller-Henson, dated March 20, 2023 (Miller-Henson Declaration), which was filed in the action, *John Joseph Crowe v. California Fish & Game Commission*, case number 22STCP03987, and marked as Exhibit J.

Respondent objects to complainant's request for official notice. Respondent's objections are overruled. Government Code section 11515 provides that an administrative law judge may take official notice of any "fact which may be judicially noticed by the courts of this State." The courts may take judicial notice of the public and private official acts of the legislative, executive, and judicial departments of this state. (*De Asis v. Department of Motor Vehicles* (2003) 112 Cal.App.4th 593, fn. 3, citing Evid. Code, § 452, subd. (c).) An agency's precedential decisions constitute official acts of the state's executive department and are therefore deserving of judicial notice. (*State Compensation Insurance Fund v. ReadyLink Healthcare Inc.* (2020) 50 Cal.App.5th 422, 444 [taking judicial notice of two precedential decisions by the California Department of Insurance Commissioner].) Regarding the Miller-Henson Declaration, judicial notice may be taken of the policy and facts set forth therein as they are not subject to dispute and are easily verifiable. (Evid. Code, § 452, subd. (h).)

Accordingly, official notice is taken of the Commission's precedential decisions and the Miller-Henson declaration. The precedential decisions, however, are not binding precedents, and the factual findings and legal conclusions below are based solely on the facts established by the evidence in this case. (*Bergental v. Workers' Comp. Appeals Bd.* (1996) 45 Cal.App.4th 1272, 1278 n.4 ["Decisions of administrative tribunals are not binding precedents. However, they may be cited for their persuasive value."])

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FACTUAL FINDINGS

Jurisdiction and Parties

1. Respondent holds a Commercial Fishing License number [REDACTED] (license) and Lobster Operator Permit [REDACTED] (LOP permit), both issued by the Department on March 25, 2011. Both the license and the LOP permit have been repeatedly renewed and are in full force and effect. They were valid at all times relevant to this proceeding.

2. Complainant filed an Accusation, dated November 1, 2022, in his official capacity, against respondent. The Accusation seeks to suspend respondent's license and LOP for 10 years because (1) respondent failed to retrieve his lobster traps before the allotted grace period following the close of the season on two occasions in violation of California Code of Regulations, title 14 (CCR), section 122, subdivision (n); (2) respondent set lobster traps within 750 feet of the Port Hueneme Harbor South Jetty in violation of CCR, section 122, subdivision (o)(1); and (3) respondent possessed undersized spiny lobsters on three different occasions (i.e., December 19, 2019, October 28, 2021, and December 7, 2021), in violation of Fish and Game Code (Code) section 8252.

3. Respondent timely filed a Notice of Defense in response to the Accusation.

4. All jurisdictional requirements were met to allow this matter to proceed to hearing.

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General Background

5. The commercial lobster fishing industry is highly regulated to protect California's natural resources and ensure the continued supply of healthy spiny lobsters. Department personnel are charged with enforcement of the regulations and laws governing lobster fishers. As part of their enforcement duties, Department personnel are permitted to board vessels and inspect each vessel's catch. They are also permitted to seize traps left in the water after the lobster season ends. (See Code, §§ 1006, 2012.)

Complainant's Evidence

2011 INCIDENTS

6. In 2011, the commercial lobster season closed on March 16, 2011, and at the time fishers had six days after the season's close to retrieve their gear, i.e., no later than March 22, 2011, as long as the traps were unbaited and their doors were wired open. (Exhibit 25, p. A191.)

7. On March 25, 2011, at approximately 9:50 a.m., nine days after the season's close and three days after the grace period, Department Captain Daniel Lening, while aboard a Department patrol vessel, observed approximately 10 to 12 white buoys floating along the surface of the ocean near Cat Rock, Anacapa Island, Ventura County. The buoys each were marked with respondent's LOP number [REDACTED] indicating they were attached to lobster traps serviced by respondent. Captain Lening prepared a report of the incident, and his testimony at hearing mirrored his report. (Exhibit 5.)

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8. Captain Lening retrieved four of the 12 lobster traps; he left the remaining eight traps in the water because they were not easily accessible. The four recovered traps each contained marine wildlife. Three of the traps were unbaited and wired open; one trap was still baited and wired closed. The closed trap contained one sea urchin and a lobster. Captain Lening took photographs documenting his findings. (Exhibit 6.)

9. On April 6, 2011, 21 days after the season's close and 15 days after the grace period, Captain Lening observed another buoy with respondent's LOP number near Cat Rock. Captain Lening pulled the trap attached to that buoy to the surface. He found the trap to be wired open and unbaited; squid eggs were attached to the trap and multiple small sea stars were inside.

10. At hearing, Captain Lening explained the importance of the timely retrieval of unused traps. According to Captain Lening, all traps are required to be wired open and unbaited at the season's close to ensure that no lobsters are intentionally caught post-season. Fishers are required to retrieve their wired-open traps by the end of the grace period because those open traps indiscriminately attract and catch different species that ultimately die. Lines attached to those traps also entangle whales and create danger for other boaters.

11. When Captain Lening interviewed respondent in June 2011 about respondent's traps seized on March 25, and April 6, 2011, respondent asserted he was unable to retrieve the traps because of poor weather. He also asserted it was unreasonable to expect him to account for and retrieve all of his traps (approximately 400 at the time) by the end of the grace period. (Exhibit 5, p. A67.) At hearing, Captain Lening credibly testified the weather had been poor for some but not all of the grace period, and there was no exception to the statutory grace period for poor weather. He

explained respondent also could have taken precautionary measures, such as moving his traps or reducing the number of traps as the season closed, to ensure respondent would have sufficient time to retrieve the traps by the end of the grace period.

12. Captain Lenging recommended respondent be criminally prosecuted for failing to retrieve his lobster traps before the season closed. (Exhibit 5, p. A67.) On November 17, 2011, respondent was convicted upon his plea of guilty to one count of violating CCR section 122, subdivision (n), failing to retrieve an open, unbaited trap within six days after the close of season, a misdemeanor. (Super. Court, Ventura County, Case No. 2011024496.) (Exhibit 8, p. A76.) The court suspended the imposition of sentence and released respondent on Conditional Revocable Release for 36 months such that if he fulfilled all of the court's conditions including the payment of fines and fees, he could apply for a dismissal of charges. (*Ibid.*) On November 17, 2014, respondent completed his probation and paid his fees and fines. (*Id.*, p. A77.) His case file was destroyed on December 29, 2016. (Exhibit 9.)

OCTOBER 2013 INCIDENT

13. Department Captain Jason Kraus was a Department Wildlife Officer in 2013 assigned to Ventura and Santa Barbara Counties. As part of his responsibilities, Captain Kraus boarded commercial boats to ensure compliance with pertinent statutes and Department regulations. Following up on an anonymous tip, Captain Kraus observed a buoy with respondent's LOP number floating 35 feet from the Port Hueneme South Jetty on October 13, 2013. At that time, no traps were permitted to be placed within 750 feet of a publicly owned pier for navigational safety. Captain Kraus prepared a report of his investigation triggered by the October 13, 2013 sighting of respondent's buoy (Exhibit 13); his testimony mirrored his report.

14. On October 15, 2013, Captain Kraus observed another buoy with respondent's LOP number floating 50 feet from the Port Hueneme North Jetty. On October 17, 2013, Captain Kraus observed four more buoys with respondent's LOP number floating 25 to 60 feet from the Port Hueneme South Jetty. Captain Kraus credibly testified each of the buoys was moving in a manner consistent with a trap being directly below it.

15. In 2013, the Port Hueneme North and South Jetties, as well as the waters inside the Port Hueneme Harbor were owned and controlled by the United States Navy (U.S. Navy), a government entity. According to Captain Kraus, the U.S. Navy monitored access to the jetties as well as the Port Hueneme Harbor. No boat or individual was permitted to enter the port or walk on the jetties without prior authorization.

16. On October 20, 2013, Captain Kraus observed respondent and two deckhands aboard the Capture pull aboard six lobster traps, four of which Captain Kraus observed previously, and two attached to buoys that recently popped open. After Captain Kraus made verbal contact with respondent, respondent confirmed his crew retrieved 50 lobsters from the six traps they pulled. According to Captain Kraus's report, respondent told him he believed the jetties were private and therefore the trapping was lawful because the traps were located outside the statutory distance allowed for private jetties, i.e. 75 feet. (Exhibit 13, p. A122.)

17. Captain Kraus credibly testified it was common knowledge among commercial fishers it was illegal to use lobster traps within 750 feet of the Port Hueneme North and South Jetties. At the time, he was unaware of anyone placing traps closer than 750 feet to the Jetties.

18. Captain Kraus cited respondent for violation of CCR section 122, subdivision (o)(1), because each of the lobster traps retrieved by respondent was within 750 feet of the Port Hueneme South Jetty, a publicly owned jetty. At hearing, Captain Kraus asserted that even if the jetty was considered private, respondent's traps violated CCR section 122, subdivision (o)(1), which also prohibits traps within 75 feet of a private jetty. According to Captain Kraus's calculations, respondent's traps were closer than 75 feet to the South Jetty.

19. The matter was heard by the Superior Court, County of Ventura, in case number 2013037306 MA. The matter was dismissed. (Exhibit F, p. B11.) Although the parties contended the dismissal was based on a dispute over the definition of a "public jetty," i.e., whether the publicly owned South Jetty should be considered a public pier or private jetty, as defined by CCR section 1.88, no court records were offered to explain the basis for the dismissal.

2019 INCIDENT

20. Lieutenant Specialist Scott Cohen (Lieutenant Cohen) has worked for the Department since 2010. On December 19, 2019, Lieutenant Cohen observed respondent on the Capture lobster fishing near Anacapa Island. Lieutenant Cohen boarded the Capture to inspect respondent's catch. Two deckhands, Jose Luis Gonzalez (Gonzalez) and Michael Volaski, Jr., were also on board. Respondent was the captain of the vessel. Lieutenant Cohen prepared a report of the incident; his testimony at hearing mirrored his report. (Exhibit 14.)

21. Lieutenant Cohen searched a trash can of water containing 20 lobsters on the Capture and found four undersized lobsters. Lieutenant Cohen used a Department-issued fixed gauge to measure the lobsters and then re-checked his

measurements using respondent's gauge. Respondent agreed with Lieutenant Cohen's measurements. He told Lieutenant Cohen that Gonzalez was responsible for measuring the lobsters and he must have done it wrong. According to Lieutenant Cohen's report, Gonzalez could not blame inexperience for his mistakes because he was a longtime commercial lobster fishing deckhand. Lieutenant Cohen then told respondent the LOP holder is responsible for all activities aboard and thus respondent was responsible for any undersized lobsters retained on board the vessel, regardless of who measured the lobsters. According to Lieutenant Cohen, respondent was apologetic and assured him it would not happen again. (Exhibit 14, p. A132.)

22. Lieutenant Cohen cited respondent for the possession of undersized spiny lobsters in violation of CCR section 121.5, subdivision (a), a misdemeanor, and referred the matter for criminal prosecution. (Exhibit 14, p. A129.) None of the court documents leading up to sentencing were offered as evidence. However, it was undisputed the court required respondent to participate in community service and submit a letter to the Ventura County District Attorney's Office accepting his responsibility for the undersized lobsters on his vessel. Respondent performed community service by volunteering with an international organization addressing fishing lines. The letter respondent submitted to the District Attorney's Office explains the steps he intends to follow to make sure his crew would not repeat their mistakes as follows:

In order to ensure that this fault does not occur again, I will take the necessary steps to train and supervise my crew to show the importance of the lobster size and all other regulations that we follow while fishing. To provide an example to my crew members, I will show them how to

properly use the lobster measuring tool. Every day when we arrive at the fishing grounds, we will go over how the tool is used and how to determine if a lobster is undersized which calls for it to be thrown back, or if it is of legal size and we can keep it in our catch tank. The law states that each lobster is to be measured one by one and to ensure that every lobster is measured, we will take each lobster out of each trap one at a time. I will also explain the importance of these regulations and how they are put in place to keep us working in the future. As a lobster operator, I know that I am fully responsible and my crew will understand that their actions are a direct reflection of what I have taught them.

. . . I look forward to another season ahead and I am confident that the steps and procedures I enact on my vessel will prevent any future violation of the rules and regulations of the Lobster fishery.

(Exhibit 16, p. A144.)

23. Based on respondent's apparent compliance with the court's probation terms, the court dismissed the action in the interest of justice based on the District Attorney's motion pursuant to Penal Code section 1385. (Exhibit F, p. B12.)

OCTOBER 2021 INCIDENT

24. On October 28, 2021, Lieutenant Cohen observed respondent in the Capture fishing for lobster near Anacapa Island, and he again boarded the boat to inspect respondent's catch and licensure. Deckhands Gonzalez and Justin Harrison

(Harrison) were also on board the vessel to assist respondent. In his inspection of respondent's catch, Lieutenant Cohen found 11 of the 45 lobsters kept in a trash can on the Capture were undersized. Lieutenant Cohen measured the lobsters using his Department-issued gauge and respondent's gauge, and also used a caliper. In each instance, he found the lobsters to be undersized. Lieutenant Cohen prepared a report of the incident (Exhibit 17), and his testimony at hearing mirrored his report.

25. When Lieutenant Cohen shared his results with respondent and Gonzalez, Lieutenant Cohen wrote that respondent asserted he was unaware lobsters were to be measured in the way Lieutenant Cohen had done so, i.e., straight across the lobster's back instead of diagonally, and that Lieutenant Cohen explained to respondent and Gonzalez his method of measuring was standard and in conformity with the law. At hearing, respondent denied he had any issues with the way Lieutenant Cohen measured the lobsters. Lieutenant Cohen later noted in his report and testified at hearing that the proper way to measure lobsters should have been well known to respondent and Gonzalez, as both were highly experienced lobster fishers. (Exhibit 17, p. A148.)

26. Lieutenant Cohen cited respondent and Gonzalez for the unlawful possession of 11 undersized lobsters and referred the matter for criminal prosecution. He did not cite Harrison because he was a new deckhand on the boat. In response to the criminal proceeding, respondent acknowledged the lobsters were undersized, and the criminal matter was ultimately dismissed. No other details regarding the criminal action were provided.

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DECEMBER 2021 INCIDENT

27. Department Game Warden Shane Oswald (Warden Oswald) has worked for the Department for three years as a boarding officer. On December 17, 2021, Warden Oswald observed the Capture lobster fishing near Anacapa Island and boarded the vessel to inspect respondent's catch and licensure. Respondent was the captain of the boat and was assisted by Harrison. After boarding the Capture, Warden Oswald found nine of the 90 lobsters in respondent's catch were undersized based on the Department-issued gauge. Warden Oswald prepared a report of the incident (Exhibit 19), and his testimony at hearing mirrored his report.

28. According to his report, respondent told Warden Oswald that Harrison was responsible for measuring all the lobsters. (Exhibit 19, p. A168.) Harrison accepted responsibility for the inaccurate measuring. (*Ibid.*) Respondent also told Warden Oswald as captain of the vessel, he "should know better," he had been cited for the same violation earlier in the season, and it has been a recurring problem. (*Ibid.*)

29. Warden Oswald issued respondent a citation for possession of nine undersized lobsters in violation of Code section 8252. The matter remains pending in Ventura County Superior Court.

Respondent's Evidence

TESTIMONY BY JUSTIN HARRISON

30. Harrison testified regarding his experience as respondent's deckhand starting in the 2021–2022 lobster season. Harrison had not fished lobster before he began working for respondent, and he learned everything on the job. Harrison testified he was initially trained on how to measure lobsters by deckhand Gonzalez.

31. Harrison was on the Capture during both the October and December 2021 incidents, and he explained how respondent handled the measuring of lobsters from that period to the most recent lobster season. According to Harrison, respondent's deckhands were responsible for measuring lobsters until the December 2021 incident. Until then, Harrison or a second deckhand would pull the traps on board while respondent was steering the Capture, the deckhands would immediately throw any obviously undersized lobsters back into the water, and they would place those lobsters obviously larger than three and one-quarter inches in a trash can filled with water. The deckhands would then place those remaining lobsters whose size was difficult to determine in a separate bucket so that the deckhands could measure them once the Capture pulled away from the rocks and was stable. Harrison testified respondent did not measure the lobsters because he was focused on handling the boat.

32. On December 21, 2021, Harrison was the only deckhand working aboard the Capture. In addition to his normal deckhand duties, Harrison was also responsible for pulling the lobster cages on board and measuring the lobsters. According to Harrison, he immediately released the obviously undersized lobsters and placed the correctly sized lobsters in the larger barrel. Although Harrison intended to place the questionably sized lobsters in a separate barrel for later measuring, he testified at hearing he may have inadvertently thrown those lobsters into the larger barrel as well. He acknowledged that he did not tell respondent or Department officers about his mistake at the time of the incident or afterward.

33. Harrison asserted respondent changed the way lobsters were measured on the boat after December 21, 2021. Now, after Harrison or another deckhand measures the lobsters, respondent remeasures any lobster whose size appears

questionable after respondent pulls the boat to a safe place. It is respondent's responsibility to make the final call regarding whether a lobster is undersized.

34. Harrison explained respondent has little incentive to keep undersized lobsters because buyers will not accept them. Harrison has been present approximately 80 times when respondent brings the caught lobsters to his buyers. Harrison never observed a buyer identify or purchase an undersized lobster. However, Harrison acknowledged that he has never observed a buyer use a fixed gauge to measure the lobsters.

RESPONDENT'S TESTIMONY

35. Respondent is ■ years old. He has fished for lobster for 40 years and held a spiny lobster permit for 39 years. His father was a commercial fisher, and respondent grew up on the ocean. In addition to commercial fishing, respondent worked full-time for 31 years in the Fire Department and as a sworn peace officer for the City of Oxnard. He has since retired from his government positions.

36. Respondent has owned his commercial fishing vessel, the Capture, since 1988. The boat is 28 feet long and 10 feet wide. Respondent added electronics and navigation radar to the vessel starting in 2015. Respondent fishes in the Southern California area; his boat is docked at the Channel Islands Marina in Ventura. Respondent usually has two deckhands working on the boat. His boat has been board by Department personnel approximately four to six times each season. Respondent does not have a history of license or LOP discipline. Respondent and his deckhands always had the appropriate licenses when Department officers boarded his ship. Several of the Department officers testifying commented on respondent's cooperation.

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37. Regarding his failure to retrieve his traps in 2011, respondent denied intentionally leaving any lobster traps in the water after the close of the season. He asserted he was aware he still had open traps in the water after the grace period closed but was unable to retrieve them because of bad weather. At the time, respondent was servicing more than 400 traps per season, and because of the size of his boat and the size and weight of the traps, respondent had to make 20 to 25 trips to return his traps to the harbor. Respondent also testified he removed the bait jars and wired open the three traps he was able to locate before the close of the season; he had been unable to locate the fourth. Respondent additionally asserted he called the National Park Service (NPS) authorities to tell them about his inability to retrieve the traps by the season's close. However, respondent never told Captain Lenging about his call to NPS in their June 11 interview, and he provided no corroboration of his call at hearing.

38. Regarding the unlawful placing of traps within 750 feet of the Port Hueneme South Jetty, respondent continues to assert the Port Hueneme jetties are private, even though they are owned by the U.S. Navy, a governmental entity. Respondent's assertion is disingenuous, particularly given his previous government employment. While the jetties may not be considered a "public pier" under CCR section 1.88 because of their inaccessibility to the public, they are indisputably owned by the public, and the Department regulation in force at the time explicitly barred placing traps within 750 feet of a "publicly-owned" jetty. (Exhibit 26, p. A195.)

39. Regarding his taking of undersized lobsters, respondent testified he never intentionally took undersized lobsters, and it was not in his economic interest to do so. He explained he reasonably relied on Gonzalez, a deckhand with 11 years of experience, to correctly measure the lobsters, and Gonzalez had done so for the first

nine years he worked for respondent. Thus, until October 28, 2021, when Gonzalez was shown to have incorrectly measured lobster a second time, respondent relied on Gonzalez to train the other deckhands because of his experience, and respondent did not directly supervise the deckhands when they measured lobsters.

40. After December 19, 2021, respondent became more personally involved in actually measuring the lobster catch. He fired Gonzalez at the end of the 2021–2022 season. He now has two crewmembers whom he has repeatedly instructed on how to accurately measure the retrieved lobsters and told the importance of releasing undersized lobsters. Although his deckhands are still responsible for measuring every lobster brought aboard, respondent now personally measures every lobster whose size his deckhands consider questionable. Since December 2021, respondent has had no reported violations, even though he has been boarded at least five times by Department personnel during this time.

41. Respondent was respectful of the proceedings. Although he disputed some of the comments attributed to him by the Department officers, he accepted responsibility for his conduct, the conduct of his crew, and his violations of the Code and accompanying regulations, except for the 2013 incident. Respondent testified he has learned from his mistakes. He now brings in his traps more aggressively and assumes he will face problems with the weather. He no longer fishes within 750 feet of the Port Hueneme jetty or 75 feet of any private jetty. He makes sure the lobsters he retains have been accurately measured.

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LEGAL CONCLUSIONS

The Commission's Authority

1. Code section 7857, subdivision (b), provides that the Commission may suspend, revoke, or cancel commercial fishing privileges for a period of time to be determined by the Commission for reasons that include:

(2) A violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control.

Burden of Proof

2. Complainant has the burden of proving respondent violated the pertinent provisions of the Code and accompanying regulations by a preponderance of evidence. (Evid. Code, § 115.) A "preponderance of evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

3. Contrary to respondent's contention, the "clear and convincing evidence standard" is not applicable here because a commercial fishing license is not a professional license and does not involve the extensive education, training, or testing requirements necessary to obtain a professional license. (See *San Benito Foods v.*

Veneman (1996) 50 Cal.App.4th 1889, 1994.) Moreover, nothing in the Code provides that the burden of proof for disciplining a commercial fishing license is clear and convincing evidence. (Evid. Code, § 115.)

Applicable Law

4. Under Code section 8251, commercial fishers are permitted to trap spiny lobsters only between the first Wednesday in October and the first Wednesday after the 15th of March. After the commercial lobster season ends, fishers have a grace period to retrieve their traps remaining in the water provided those traps are unbaited, wired open, attached to a buoy floating at the surface of the ocean, and no attempt is made to take lobsters from those traps. In 2011, that grace period was six days. (CCR, § 122, subd. (n.) (as of 2011).) The retrieval grace period has since been extended to nine days after the close of the season. (CCR, § 122.2, subd. (b).)

5. In 2013, California prohibited LOP holders from setting spiny lobster traps within 750 feet of a publicly-owned jetty. (CCR, § 122, subdivision (o)(1) (Exhibit 26, p. A195).) The purpose of the restriction was to ensure the safety of vessels entering a harbor.

6. California law prohibits the possession, purchase, or sale of undersized spiny lobsters. (Code § 8252; CCR, § 121.5, subd. (a).) California fishers are only permitted to possess, purchase, or sell a spiny lobster of at least three and one-quarter inches in length measured in a straight line on the mid-line of the back from the rear edge of the eye socket to the rear edge of the body shell. (*Ibid.*) Every person taking spiny lobster shall carry a fixed caliper measuring device. Lobsters measuring less than three and a quarter inches must be immediately released into the water. No

undersized lobsters may be placed in any type of receiver or retained in any person's possession. (CCR, § 121.5, subd. (b).)

Causes for Discipline

7. First Cause for Discipline. Complainant proved by a preponderance of evidence that respondent left lobster traps in the water nine days after the close of the 2010–2011 lobster fishing season and six days after the end of the grace period. (Factual Findings 6–8.) Cause therefore exists to discipline respondent's license and LOP under Code section 7857, subdivision (b), for respondent's violation of CCR section 122, subdivision (n). (Legal Conclusions 1–4.)

8. Second Cause for Discipline. Complainant proved by a preponderance of the evidence respondent failed to retrieve a closed, baited lobster trap in the water after the close of the 2010–2011 lobster fishing season. (Factual Findings 8, 12.) Cause therefore exists to discipline respondent's license and LOP under Code section 7857, subdivision (b), for respondent's violation of Code section 8251. (Legal Conclusions 1–4.)

9. Third Cause for Discipline. Complainant proved by a preponderance of the evidence respondent left one lobster trap in the water 15 days after the close of the lobster fishing season and nine days past the allotted grace period. (Factual Finding 9.) Cause therefore exists to discipline respondent's license and LOP under Code section 7857, subdivision (b) for respondent's violation of CCR section 122, subdivision (n). (Legal Conclusions 1–4.)

10. Fourth Cause for Discipline. Complainant proved by a preponderance of the evidence respondent placed six lobster traps within 750 feet of the Port Hueneme South Jetty on October 20, 2013. (Factual Findings 13–18.) Respondent's assertion that

the jetties should be considered private because they are not accessible to the public is not persuasive since the trapping limitation is based on public ownership, not public use or accessibility. Cause therefore exists to discipline respondent's license and LOP under Code section 7857, subdivision (b), for violation of CCR section 122, subdivision (o)(1). (Legal Conclusions 1–3, 5.)

11. Fifth, Sixth, and Seventh Causes for Discipline: Complainant proved by a preponderance of evidence respondent possessed four undersized lobsters on December 19, 2019, 11 undersized lobsters on October 28, 2021, and nine undersized lobsters on December 7, 2021. (Factual Findings 20–29.) Cause therefore exists to discipline respondent's license and LOP under Code section 7857, subdivision (b), for three instances of violating Code section 8252.

Disposition

12. Complainant requests a 10-year suspension of respondent's license and LOP, citing respondent's repeat Code violations, his criminal referrals, and his dishonesty. According to complainant, a 10-year suspension is necessary to protect the fishery. Complainant also asserts a 10-year suspension is consistent with the Commission's precedential decisions.

13. Respondent asserts a 10-year suspension of respondent's license is tantamount to revocation considering his age. He contends probation or a shorter suspension is appropriate because respondent accepted responsibility for his violations, this is the first time the Department has sought to take action against respondent's license and LOP, and respondent has changed his measuring and other practices in response to the Department's actions.

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14. Neither the Department nor the Commission has developed guidelines regarding the level of discipline to impose for misconduct by a commercial fisher. Code section 12154, which concerns appeals of suspended or revoked hunting or sport fishing licenses, describes useful factors in determining the appropriate discipline in this case. These factors include the nature, circumstances, extent, and gravity of the violations, the person's culpability for the violations, and the injury to natural resources caused by the violations. (Code, § 12154, subd. (b)(1).)

15. Considering those factors, the evidence established respondent committed seven violations while lobster fishing from 2011 to 2021. However, three of those violations occurred more than 12 years ago in 2011, and one violation occurred in 2013, almost 10 years ago. Complainant offered no evidence respondent repeated those earlier violations, and the law has changed such that respondent's failure to timely retrieve three of the five traps before the end of the grace period (the first cause for discipline) would no longer be actionable. Respondent also asserted he now takes great care to retrieve his traps before the close of the season grace period and no longer traps lobster within 750 feet of the Port Hueneme Jetties. Because of the passage of time without a repeat of these earlier violations, less weight is accorded to them in determining discipline. (See *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070 ["evidentiary significance of . . . misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct"].)

16. Respondent's three recent violations from 2019 to 2021 are more concerning. Respondent's crew, under his supervision, repeatedly took undersized lobsters on three separate occasions, and respondent was criminally cited each time. The dismissals of respondent's 2019 and October 2021 citations do not excuse respondent's wrongful conduct. Nor does the fact that it was respondent's deckhands

who failed to measure the lobsters properly, as respondent, as captain and holder of the LOP and license, is responsible for the catch. While the total size of respondent's unlawful catch, i.e., 24 lobsters, makes it difficult to calculate the extent respondent's acts have injured natural resources, respondent's repeated violations, respondent's belated failure to change his measuring methods, and the time the Department has had to devote to respondent's violations instead of those committed by others make it likely the injury to the natural resources was much greater than the potential loss of 24 lobsters.

17. Complainant did not prove respondent's unlawful taking of undersized lobsters was either financially motivated or reflected dishonest behavior. However, contrary to respondent's promise to the court in response to his 2019 citation, respondent did not "take the necessary steps to train and supervise" his crew to ensure each lobster he retained was accurately measured. (Factual Finding 22.) His training was sporadic at best, and in December 2022 he exclusively relied on a single overcommitted deckhand to perform the measurements. Moreover, it was not until after two further violations and the prospect of a criminal proceeding that respondent took meaningful steps to ensure his crew acted in compliance with the law. As captain of the vessel and the person responsible for his deckhands' actions, respondent's failure to carefully supervise the lobster measuring was grossly negligent and reflects a disrespect for the law as well as the health of California's fisheries.

18. The precedential cases cited by complainant where revocation was ordered do not address the conduct demonstrated here. For instance, in the *David Hornbacker* matter (Case No. 17ALJ02-FGS), the respondent concealed his violations and made false statements to Department officers. (Exhibit 34, pp. Z22–Z46.) In the *Troy Tecklenburg* matter (Case No. 15ALJ04-FGC), the respondent had a history of

discipline, lied to Department officers, and sustained seven violations in three years. (*Id.*, pp. Z161–Z170.) In the *Pursuit Fishing* matter (Case No. 19ALJ05-FGC), the respondent suffered multiple criminal convictions, had 15 causes for discipline, and showed a pattern of intentionality and dishonesty. (*Id.*, pp. Z67–Z102.) In each of these cases, the respondent was also the principal violator. Here, there is no evidence respondent deceived the Department officers, respondent has no history of discipline, and respondent accepted responsibility for his misconduct and the misconduct of his deckhands.

19. However, respondent's conduct is more troubling than the conduct found in cases where a one or two-year suspension was ordered. Unlike the respondent in *Gustavo Gutierrez* (Case No. 20ALJ02-FGC), respondent's misconduct was not limited to events in one day. (Exhibit 34, pp. Z47–Z66.) Respondent's misconduct was also not based on a misunderstanding of the law and occurred more recently than in the *Thanh Van* matter (Case No. 19ALJ17-FGC). (*Id.*, pp. Z103–Z110.) Additionally, respondent's actions were not limited to failing to remove traps like the respondent in the *Gerald Wetle* matter (Case No. 17ALJ05-FGC). (*Id.*, pp. Z156–Z160.)

20. Based on the foregoing, a five-year suspension is appropriate to protect California's public resources and is consistent with the Board's precedential decisions. (See *In the Matter of the Accusation Against Adam Robert Salvatore Aliotti* (Case No. 17ALJ04-FGC) [imposing five-year suspension for multiple violations and failure to properly supervise employees]; *In the Matter of the Accusation Against Pacific Star Sportfishing LLC, et al.* (Case No. 15ALJ08-FGC) [imposing five-year suspension for multiple violations and criminal convictions occurring four years before the hearing] (Exhibit 32, pp. Z111–Z123, Z138–Z154.) While respondent's acknowledgment of the wrongfulness of his past actions is an essential step toward rehabilitation, such

remorse does not demonstrate rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) A truer indication of rehabilitation is sustained conduct over an extended period. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Although respondent recently changed his fishing practices, that conduct has not been sustained over an extended period. It therefore is too soon to evaluate whether respondent's commitment to reform is sincere, particularly considering respondent's failure to abide by his promise to the court to closely supervise and train his employees and his strong incentive to obey the law at least while criminal charges stemming from the December 2021 incident are pending against him. Respondent's repeated contravention of the laws intended to protect marine fishery resources warrants more than a minimum suspension of his fishing privileges. A five-year suspension will have a deterrent effect on respondent as well as other licensees by way of example.

ORDER

1. The Commercial Fishing License issued to respondent Michael Andrew Volaski is suspended for a period of five years.
2. The Lobster Operating Permit issued to respondent Michael Andrew Volaski is suspended for a period of five years.

DATE: 08/04/2023



CINDY F. FORMAN

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
 (916) 653-4094
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 1, 2025

California Fish and Game Commission
 715 P Street
 16th Floor
 Sacramento, CA 95124

Re: Department's response to Michael Volaski's Petition for Reinstatement of his Lobster Operator Permit and Commercial Fishing License.

Dear Commissioners:

This letter is in response to Michael Volaski's Petition for Reinstatement (Petition), received by the Fish and Game Commission (Commission) on July 7, 2025, in which he is seeking the reinstatement of his Lobster Operator Permit and Commercial Fishing License (Entitlements). The Department of Fish and Wildlife (Department) appreciates the opportunity to respond to the Petition. As explained below, the Petition fails to show that Mr. Volaski has been rehabilitated or is any less of a threat to fishery resources, or provide any other reason justifying reducing the original five-year suspensions to two years.

Background

From 2011 to 2021, Mr. Volaski committed seven commercial fishing violations, some repeatedly. These violations include:

- Twice leaving lobster traps in the water after the close of the fishing season in 2011 (violations of California Code of Regulations, Title 14, section 122, subdivision (n));
- Failing to retrieve a closed and baited lobster trap from the water after the close of the 2010–2011 lobster fishing season (violation of Fish and Game Code section 8251);
- Placing six lobster traps within 750 feet of a public jetty in 2013 (violation of California Code of Regulations, Title 14, section 122, subdivision (o)(1)); and
- Possessing multiple undersized lobsters three times in a two-year period from 2019-2021 (violations of Fish and Game Code section 8252 and California Code of Regulations, Title 14 section 121.5, subdivision (a)).¹

The Department filed an Accusation seeking a ten-year suspension of Mr. Volaski's Entitlements.² After a hearing on May 22-24, 2023, Administrative Law Judge (ALJ) Cindy Forman with the Office of Administrative Hearings considered all the evidence proving these violations, aggravating and mitigating factors, and decisions designated as precedential by the Commission. In her August 4, 2023 Proposed Decision (Proposed Decision), she recommended

¹ Proposed Decision, pp. 21-22.

² Exhibit 1, pp. 1-21.

imposing a five-year suspension of the Entitlements. ALJ Forman concluded, “Based on the foregoing, a five-year suspension is appropriate to protect California’s public resources and is consistent with the [Commission]’s precedential decisions.”³

The Commission issued a Decision on October 20, 2023, adopting the Proposed Decision and making the suspension effective on October 27, 2023 (Decision).

Petition

On July 7, 2025, the Commission received the Petition, which was submitted by attorney Justin Robinson on Mr. Volaski’s behalf. The Petition claims:

Mr. Volaski has demonstrated the rehabilitative effort sufficient and necessary to justify his return to his fishing career. There exists no legitimate basis on which to conclude Mr. Volaski is dishonest, immoral, disreputable, or otherwise incompetent such that continued suspension is an appropriate course of action at this point.⁴

But the Petition presents no compelling new evidence showing rehabilitation or any other factor that would justify reinstating the Entitlements less than half-way into his five-year suspension.

Mr. Volaski has not shown that he has been rehabilitated.

The Petition states, “While on suspension, Mr. Volaski has fully complied with the terms of his suspension, and has demonstrated the remorse and rehabilitation required to justify future license and permitting.”⁵ Mr. Volaski has been blocked from obtaining the Entitlements since the Decision took effect, so one would expect that at a bare minimum, he would not violate the Decision or commercial fishing laws after only two years by continuing to fish.

But nowhere does Mr. Volaski express remorse or demonstrate rehabilitation for the violations. If anything, he has attempted to minimize his violations just as he did during the May 2023 evidentiary hearing. While he did claim that he “fully understand[s] the fishing laws and [] have not or would not break them intentionally,”⁶ and accepted responsibility for most of the violations at the hearing,⁷ he now downplays their seriousness, stating “I have been cited for several misdemeanors, not felonies.”⁸ The Petition similarly downplays the seriousness of the violations by stating, “Throughout his entire 40-year career working as a commercial fisherman, Mr. Volaski has been convicted only one time for one wired-open unbaited trap in 2011;”⁹ highlighting that the 2013 violation for placing traps within 750 feet of a public jetty “was dismissed by the Ventura County Superior Court;” and claiming that he had “no intention of

³ Proposed Decision, pp. 25-26.

⁴ Petition, p. 7.

⁵ Petition, p. 7.

⁶ Michael Volaski-Personal Statement.

⁷ Proposed Decision, p. 18.

⁸ Michael Volaski-Personal Statement.

⁹ Petition, p. 6.

landing” the undersized lobster he possessed on three occasions “until he had measured them.”¹⁰ The Department notes that Mr. Volaski made these same arguments during his evidentiary hearing, and California Code of Regulations, title 14, section 1.62 requires that “all fish, mollusks or crustaceans less than the legal minimum size or greater than the maximum legal size must be returned immediately to the water from which they were taken,” so any delay in measuring and releasing the undersized lobster is illegal.

But petitioners who are remorseful and rehabilitated do not downplay the violations they committed. Instead, they show they understand the seriousness and nature of the violations, including the harm they caused, “demonstrate [] continued efforts to learn and grow from” the discipline (as stated in the Petition),¹¹ and show “sustained [lawful] conduct over an extended period” (as stated in the Proposed Decision).¹² Mr. Volaski has shown none of these things.

Likewise, none of the letters Mr. Volaski submitted that vouch for his character show his remorse or rehabilitation.¹³ None of the letter writers testified at the hearing as character witnesses or describe any firsthand knowledge of the violations, and while many of the writers seem to like Mr. Volaski personally, they do not describe any remorsefulness or rehabilitation experienced by Mr. Volaski since the violations occurred. Some writers even strike a defiant tone, mischaracterizing or further downplaying the seriousness of the violations (when they are even acknowledged) or relitigating arguments about the supposed unfairness of imposing the five-year suspensions.¹⁴ And while Mr. Volaski’s volunteer work described in Kurt Lieber’s letter, in which he has purportedly been assisting in the retrieval of abandoned commercial fishing gear, is commendable,¹⁵ it apparently has had little rehabilitative effect. Mr. Volaski has been engaging in similar volunteer efforts since 2011 (originally, pursuant to court-ordered community service),¹⁶ but committed four of the seven violations described above since then.¹⁷

Mr. Volaski is still a threat to violate again.

The Petition claim that “The likelihood of recurrence [of violations] is minimal” is completely undermined by the record. The Petition states, “Not only does Mr. Volaski have a career defined by legal compliance and cooperation, but the significant impact of the current penalty thus far imposed has adequately deterred future transgressions.”¹⁸ Mr. Volaski’s repeated violations hardly constitute a “career defined by legal compliance and cooperation.” Mr. Volaski has a career defined by committing the same violations repeatedly, twice keeping his traps in the water after the close of the fishing season, and on three occasions possessing undersized lobster.¹⁹ And, Mr. Volaski has previously promised to stop violating, only to repeatedly break these promises. For example, in 2019, after possessing undersized lobster, Mr. Volaski assured a Department

¹⁰ Petition, p. 5.

¹¹ *Id.*

¹² Proposed decision, p. 26.

¹³ Petition, pp. 9-17.

¹⁴ Petition, pp. 10-12.

¹⁵ Petition, p. 15.

¹⁶ Testimony of Mr. Volaski, *In the Matter of the Accusation against Michale Andrew Volaski*, May 22-24, 2023.

¹⁷ Proposed Decision, pp. 21-22.

¹⁸ Petition, p. 7.

¹⁹ Proposed Decision, pp. 21-22.

Wildlife Officer that he would not commit that violation again.²⁰ Later, in a letter he wrote to the Ventura County District Attorney's Office pursuant to a court order, he described improvements to the training and supervision of his employees that he claimed he would make, and assured the D.A.'s Office that he would "take even more preventative measures to ensure that this never happens again aboard my vessel."²¹ But he committed the same violation on October 28, 2021 and again on December 17, 2021,²² and as ALJ Forman noted, he "fail[ed] to abide by his promise to the court to closely supervise and train his employees."²³ Thus, Mr. Volaski is a continuing threat to violate, despite providing yet another assurance that he will not violate again. The most effective way to "deter[] future transgressions" is not to reinstate the Entitlements, but to continue to keep him off the water.

Mr. Volaski's five-year suspensions are necessary to protect marine fishery resources.

When grappling with the appropriate suspension terms in this matter, ALJ Forman rejected two-year suspensions and instead concluded that five years were necessary to protect marine fishery resources. ALJ Forman stated:

19. However, respondent [Volaski]'s conduct is more troubling than the conduct found in cases where a one or two-year suspension was ordered. Unlike the respondent in Gustavo Gutierrez (Case No. 20ALJ02-FGC), respondent's misconduct was not limited to events in one day. (Exhibit 34, pp. Z47–Z66.) Respondent's misconduct was also not based on a misunderstanding of the law and occurred more recently than in the Thanh Van matter (Case No. 19ALJ17-FGC). (Id., pp. Z103–Z110.) Additionally, respondent's actions were not limited to failing to remove traps like the respondent in the Gerald Wetle matter (Case No. 17ALJ05-FGC). (Id., pp. Z156–Z160.)

20. Based on the foregoing, a five-year suspension is appropriate to protect California's public resources and is consistent with the Board's precedential decisions. (See In the Matter of the Accusation Against Adam Robert Salvatore Aliotti (Case No. 17ALJ04-FGC) [imposing five-year suspension for multiple violations and failure to properly supervise employees]; In the Matter of the Accusation Against Pacific Star Sportfishing LLC, et al. (Case No. 15ALJ08-FGC) [imposing five-year suspension for multiple violations and criminal convictions occurring four years before the hearing] (Exhibit 32, pp. Z111–Z123, Z138–Z154.) While respondent's acknowledgment of the wrongfulness of his past actions is an essential step toward rehabilitation, such remorse does not demonstrate rehabilitation. (Seide v. Committee of Bar Examiners (1989) 49 Cal.3d 933, 940.) A truer indication of rehabilitation is sustained conduct over an extended period. (In re Menna (1995) 11 Cal.4th 975, 991.) Although respondent recently changed his fishing practices, that conduct has not been sustained over an extended period. It therefore is too soon to evaluate whether respondent's

²⁰ Exhibit 14, p. A132.

²¹ Exhibit 16, p. A144.

²² Proposed Decision, p. 22.

²³ Proposed Decision, p. 26.

commitment to reform is sincere, particularly considering respondent's failure to abide by his promise to the court to closely supervise and train his employees and his strong incentive to obey the law at least while criminal charges stemming from the December 2021 incident are pending against him. Respondent's repeated contravention of the laws intended to protect marine fishery resources warrants more than a minimum suspension of his fishing privileges. A five-year suspension will have a deterrent effect on respondent as well as other licensees by way of example.²⁴

ALJ Forman's main conclusion, adopted by the Commission, still applies: two-year suspensions of Mr. Volaski's Entitlements are not long enough to protect marine fishery resources. As ALJ Forman had anticipated, two years into the suspensions, Mr. Volaski has failed to show that he is sufficiently rehabilitated to entrust him with commercial fishing privileges. Although Mr. Volaski claims that "these five years of suspension [are] an unwarranted and extreme punishment,"²⁵ ALJ Forman carefully explained how these suspensions are necessary and consistent with discipline imposed by the Commission in other matters. While it is unfortunate that Mr. Volaski may be experiencing health problems and financial hardships, neither of these misfortunes make him more fit to hold the Entitlements or less of a threat to marine resources. Ultimately, as ALJ Forman put it, "Respondent's repeated contravention of the laws intended to protect marine fishery resources warrants more than a minimum suspension of his fishing privileges."²⁶

Accordingly, the Department respectfully requests that you reject the Petition and maintain the suspensions for their entire five-year terms.

If you have any questions, please do not hesitate to contact Attorney David Kiene by telephone at (916) 708-6552 or e-mail at David.Kiene@wildlife.ca.gov.

Sincerely,

DocuSigned by:



AA968532644A4EB...

NATHANIEL ARNOLD
Chief, Law Enforcement Division

Cc: Justin Robinson

²⁴ Proposed Decision, pp. 25-26.

²⁵ Michael Volaski-Personal Statement.

²⁶ Proposed Decision, p. 26.

Miranda Dempsey McCroskey, Esq. (SBN 189152)
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UNLOCK LEGAL, APLC
360 E 1st St #61
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949-988-4444 phone
657-284-6433 facsimile

Attorneys for Petitioner
Michael Volaski

BEFORE THE
CALIFORNIA FISH AND GAME COMMISSION

In the Matter of the Reinstatement of:

MICHAEL ANDREW VOLASKI

Petitioner.

Agency Case No.: 25ALJ31-FGC

**PETITIONER'S WRITTEN
ARGUMENT IN SUPPORT OF
REINSTATEMENT**

To the Fish and Game Commission, Department Of Fish and Wildlife ("Complainant"), and
its Attorney of Record:

This written argument is offered in light of and in support for Mr. Michael Volaski's
("Petitioner") reinstatement efforts with Complainant. We ask that the information described herein,
along with our earlier submission(s), be duly considered as rehabilitative and mitigative, thereby
supporting a finding in favor of Petitioner.

1. STATEMENT OF FACTS

On or about March 25, 2011, Complainant issued a Lobster Operator Permit (no. [REDACTED])
and a Commercial Fishing License (no. [REDACTED]) to Petitioner. On November 1, 2022, Complainant
filed an Accusation against Petitioner, seeking to suspend his license for ten years because of the
following alleged violations:

- **California Code of Regulations Title 14, Section 122(n)(2)** - Two incidents of alleged failure to retrieve lobster traps before the allotted grace period following the close of the season.
- **California Code of Regulations Title 14, Section 122(o)(1)** - Alleged setting of lobster traps within 750 feet of the Port Hueneme Harbor South Jetty.
- **Fish and Game Code Section 8252** - Alleged possession of undersized spiny lobsters on the following dates: December 19, 2019, October 28, 2021, and December 7, 2021.

In May of 2023, Petitioner was required by the Commission to be retried and defend himself a second time on all former accusations, 4 of which had been previously dismissed and destroyed by the Ventura County Superior Court. He defended himself against these claims before an Administrative Law Judge, Cindy F. Forman, where he sought to demonstrate his continued fitness for licensure. The judge elected to impose a 5-year suspension in lieu of the Department's requested 10-year suspension, citing the latter as being excessive and unduly harsh.

As a result of this Accusation, Petitioner's license and permits (lobster, crab, salmon) were both suspended for five years. Since these suspensions have gone into effect and in full compliance with their imposed terms, Petitioner has ceased his professional fishing practices.

With the suspension of his license and permits, Petitioner has been struggling financially and personally. His son, Mike Jr., has taken over his father's payments for an SBA COVID-19 EIDL Government Business Loan for \$240,000, which was taken out for his fishing business in 2021. In addition, he is paying for Petitioner's boat/slip fee and storage yard of fishing gear.

Six months after the imposed suspension, Petitioner was diagnosed with [REDACTED] and has since [REDACTED]. However, without the stable flow of income from what was once a stable career, Petitioner has grown concerned about

1 what the future holds with regard to his well-being, and whether this suspension may operate as a de
2 facto revocation. Note that Petitioner will be [REDACTED] years old at the end of the 5 year suspension.

3 Today, Petitioner requests the reinstatement of his license, three years prior to what would
4 be the termination date of the suspension(s), given his compliance with the Order thus far,
5 rehabilitative effort, personal reflection, and exigent health circumstances.

6
7 **2. ARGUMENT**

8 **a. This Petition Is Brought Under Government Code Section 11522.**

9 Government Code Section 11522 provides the following:

10 “A person whose license has been revoked or suspended may petition the
11 agency for reinstatement or reduction of penalty after a period of not less
12 than one year has elapsed from the effective date of the decision or from
13 the date of the denial of a similar petition. The agency shall give notice to
14 the Attorney General of the filing of the petition and the Attorney General
15 and the petitioner shall be afforded an opportunity to present either oral or
16 written argument before the agency itself. The agency itself shall decide
17 the petition, and the decision shall include the reasons therefor, and any
18 terms and conditions that the agency reasonably deems appropriate to
19 impose as a condition of reinstatement. This section shall not apply if the
20 statutes dealing with the particular agency contain different provisions for
21 reinstatement or reduction of penalty.”

22 Suspension is a valid status from which one can seek relief by reinstatement, as evidenced
23 above. Moreover, this petition is timely, given that at least one year has passed since the decision and
24 order went into effect.

25 In light of the above, we ask that the information included herein be duly considered by the
26 Commission in this matter.

27 **b. Petitioner Has Undergone The Requisite Personal Reflection Necessary To**
28 **Justify Reinstatement.**

Administrative petitions for reinstatement exist so as to offer disciplined licensees recourse
for an otherwise indefinite or harsh penalty, from which they have successfully rehabilitated. This

1 purpose is, itself, indicative of the fundamental legal precept that such rehabilitation can occur, and
2 that licensees need not endure hardship longer than necessary when it has. Acknowledgement of the
3 wrongfulness of one's actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar*
4 *Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940.).

5
6 In the decision calling for Petitioner's suspension, Judge Forman stated that "[a]lthough
7 [Petitioner] recently changed his fishing practices, that conduct has not been sustained over an
8 extended period. It therefore is too soon to evaluate whether [Petitioner's] commitment to reform is
9 sincere..." In effect, then, this reinstatement effort is further justified by Judge Forman's own
10 conclusion that additional time rehabilitating is necessary to justify continued licensure and
11 permitting, as Petitioner continued to fish the rest of the '21-'22 season, the entire '22-'23 season,
12 and the opening of the '23-'24 season with multiple boardings by CDFW Officers without any
13 incidents.

14 Petitioner has suffered greatly with the deprivation of his license and permits, and
15 acknowledges that, if given the opportunity, he must exercise greater caution in the future to ensure
16 full and total compliance with all California regulations. It is worth noting that Judge Forman
17 acknowledged Petitioner "changed his fishing practices" in light of the original allegations. While he
18 has not had the opportunity to sustain those efforts due to the suspension, Petitioner has maintained
19 the necessary self-discipline and professional judgment needed to justify the granting of this relief.
20

21 In short, given the nature of these allegations, minimal harm caused to the California public,
22 extensive personal impact this has had on Petitioner, and his sincere efforts to learn from this
23 experience, we assert reinstatement is justified.

24 **c. Exigent Circumstances Have Arisen Which Further Justify The Pursued Relief.**

25 Petitioner has unfortunately suffered from a [REDACTED] diagnosis since the imposition
26 of the Department's discipline. This diagnosis has been carefully attended to by both Petitioner and
27 his family; however, the expense of that treatment paired with the limited financial options Petitioner
28

1 has due to the loss of his career, has had a significant impact on his mental, physical, and emotional
2 well-being.

3 We understand that such illness does not, on its own, justify reinstatement. However, where
4 the diagnosis at issue presents genuine risk to life and financial stability, we assert it is a relevant
5 consideration for the premature reinstatement of a suspended license and/or permit.
6

7 **d. Petitioner Offers Mitigation For The Commission's Consideration.**

8 Included in our initial submission, and offered again today for the Commission's
9 consideration, are various forms of mitigation and evidence of rehabilitation, further outlining the
10 basis on which Petitioner seeks this relief. (See **Attachment A** for "Initial Submission Documents").

11 These documents include letters drafted by individuals who know Petitioner well, and can
12 accurately and meaningfully attest to his character. The following is a brief description of these
13 letters for the Commission's consideration:

14 Honorable Jason T. Hodge, Oxnard Port Commissioner, wrote a letter for Petitioner on
15 October 29, 2024, describing him as one "who doesn't just fulfill his duties but goes above and
16 beyond to make a positive impact on those around him." He goes on to explain that he "can speak to
17 [Petitioner's] outstanding character and dedication to serving others."
18

19 Claudia Moore, Petitioner's partner, described her knowledge of and experience with
20 Petitioner. Specifically she explained that "it was precisely [Petitioner's] integrity that initially
21 attracted [her] to him."

22 Gene Martin, a retired Fish and Game Warden in California, explained that the state
23 "need[s] more like [Petitioner], not fewer."

24 Kurt Lieber, an owner of a non-profit organization that locates and removes fishing gear that
25 has been abandoned, noted that Petitioner "has been very supportive and helpful" in pursuing the
26 non-profit's mission.
27
28

Further still, Petitioner has also provided a personal statement for the Commission's consideration. This statement outlines his remorse, reflection, and sincere assurance that these activities will not occur again in the future. In this submission, we have also provided an updated statement for the Commission's review. (See **Attachment B**).

We ask that the Commission read these letters and all other mitigation in their entirety to ensure a full and maximal understanding of Petitioner's character.

e. The Original Decision In This Case Was Unnecessarily Punitive.

The purpose of discipline actions by administrative bodies is not to punish, but to protect the public by discharging those practitioners who are dishonest, immoral, disreputable or incompetent. (*Borror v. Dep't of Investment*, 15 Cal. App. 3d 531, 540 (1971); *Fahmy v. Medical Board of California*, 38 Cal.App.4th 810, 817 (1995)).

Despite this fact, Judge Forman called for a five-year suspension in order to "have a deterrent effect on respondent as well as other licensees by way of example." We understand deterrence is a natural consideration in legal proceedings - be they administrative, criminal, or civil. However, that deterrence must be weighed against the equally valid consideration of avoiding unnecessary punitive action.

Whether the alleged misconduct called for a five-year suspension is, at this time, ultimately immaterial. However, if that suspension was, to any degree, excessive, the granting of this relief may help to cure the impact of that decision on Petitioner and ultimately adhere to the California policy discussed in *Borror* and *Fahmy*.

3. CONCLUSION

We understand the Commission is tasked with a difficult decision in this case. Assessing reinstatement requires a detailed consideration of all efforts taken by a disciplined individual to determine whether such relief is justified. It is our assertion that the efforts by Petitioner support reinstatement.

1 He has struggled in light of the suspension, endured financial and personal hardship, and
2 now stands before the Commission as someone who has little recourse apart from resuming his
3 career. We ask for leniency, understanding, and an opportunity to demonstrate the rehabilitation
4 described above.
5

6
7 Respectfully submitted,

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10 JUSTIN ROBINSON, ESQ.
11 ATTORNEY FOR PETITIONER
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Dated: December 1, 2025

Attachment A



UNLOCK LEGAL[®]

A Professional Law Corporation

January 21, 2025

California Department of Fish and Wildlife
PO Box 944209
Sacramento, CA 94244-2090

Re: Michael Volaski; Reinstatement

To Whom It May Concern:

Our office represents Mr. Michael Volaski in regard to this Petition for Reinstatement before the California Department of Fish and Wildlife and Fish and Game Commission.

By signing below, Mr. Volaski affirms our representation of him in this matter.

Michael A. Volaski

Date: 01 / 20 / 2025

MICHAEL VOLASKI

Given the time he has already served on suspension, his previous compliance, and the unique impact this suspension has had on his family, we ask that the Department consider and ultimately grant this Petition for Reinstatement, pursuant to Government Code Section 11522.

It is our intention, with the attached letter and supporting documentation, to demonstrate that Mr. Volaski holds the requisite skill, judgment, and integrity necessary to hold the applicable license and permits in the state of California.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Justin Robinson, Esq.

January 21, 2025

California Department of Fish and Wildlife
PO Box 944209
Sacramento, CA 94244-2090

Re: Michael Volaski; Reinstatement
Suspended License No. L03025; All Suspended Permits

To Whom It May Concern:

Our office has been retained to assist with Mr. Mike Volaski in regard to the reinstatement of his license and permits with the Department of Fish and Wildlife.

1. STATEMENT OF FACTS

Mr. Volaski received his commercial fishing license and accompanying permits on January 1, 1984. From that date to the date of his eventual suspension, for 40 consecutive years, Mr. Volaski maintained and timely renewed his credentials with distinction. As a member of a multi-generational family of California fishermen, Mr. Volaski took pride in his work, and endeavored to comply with all state regulations and standards.

On November 1, 2022, an Accusation was filed against Mr. Volaski alleging violations of California Code of Regulations, title 14 (CCR), section 122, subdivision (n); section 122, subdivision (o)(1); and Fish and Game Code section 8252.

Mr. Volaski defended himself against these claims and ultimately went before an Administrative Law Judge, where he sought to demonstrate his continued fitness for licensure. The Judge elected to impose a 5-year suspension in lieu of the Department's requested 10-year suspension, citing the latter as being excessive and unduly harsh.

With the suspension of his license and permit(s), Mr. Volaski has been struggling financially and personally. Mike Jr. has been helping his dad make payments for an SBA COVID-19 EIDL Government Loan for \$240,000 taken out for his fishing business in 2021. In addition, he is paying for Mike's boat/slip fee and storage yard of fishing gear.

Six months after the suspension, Mr. Volaski was diagnosed with [REDACTED] and has been fighting this diagnosis accordingly. However, without the stable flow of income from what was once a stable career, Mr. Volaski has grown concerned about what the future holds with regard to his well-being, and whether this suspension may operate as a de facto revocation.

It is therefore our request that Mr. Volaski's license and permits be reinstated accordingly.

2. ARGUMENT

a. Generally

We have prepared this letter to lay out our formal legal argument(s) justifying reinstatement as an appropriate and justified remedy in this matter. California Government Code Section 11522 provides the following:

“A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.”

In the absence of additional or contradictory provisions for any specific department, board, or agency, the above code section governs the procedure of a reinstatement. Thus, as the Department of Fish and Wildlife and the Fish and Game Commission do not have an alternative statute limiting the use of reinstatement in suspension cases, this remedy is both justified and specifically required when pursuing relief from said suspension.

b. Interests of Justice

Reinstatement is, as a matter of course and law, an opportunity for a disciplined individual to demonstrate meaningful rehabilitation, personal growth, and substantive professional development, in contrast to the information and issues outlined in their original disciplinary action. In this case, it is the intention and goal of Mr. Volaski to demonstrate this growth and development.

In her decision imposing a suspension on Mr. Volaski, Administrative Law Judge Cindy Forman found that, “[a]lthough respondent recently changed his fishing practices, that conduct has not been sustained over an extended period. It therefore is too soon to evaluate whether respondent’s commitment to reform is sincere, particularly considering respondent’s failure to abide by his promise to the court to closely supervise and train his employees and his strong incentive to obey the law at least while criminal charges stemming from the December 2021 incident are pending against him.”

Thus, this reinstatement effort is further justified by Judge Forman’s own conclusion that additional time rehabilitating is necessary to justify continued licensure and permitting. Although Mr. Volaski continued to fish the rest of the ‘21-’22 season, the entire ‘22-’23 season, and the

opening of the '23-'24 season with multiple boardings by CDFW Officers, without any incidents, we are now one year removed from the initial suspension, and Mr. Volaski is well-suited to demonstrate his continued efforts to learn and grow from this experience.

3. MITIGATION AND REHABILITATION

In support of his efforts to demonstrate his rehabilitation and claims of personal and professional growth, Mr. Volaski has gathered various forms of mitigation for the Department and Commission's consideration. We have included this information below, along with our description of Mr. Volaski's efforts in the context of various factors of rehabilitation.

a. Nature And Severity Of The Underlying Misconduct

It is alleged Mr. Volaski left lobster traps in the water after the close of the 2010-2011 lobster fishing season. He pled guilty to one wired-open unbaited lobster trap. In 2013, he was cited for placing six lobster traps within 750 feet of the Port Hueneme South Jetty. This case was dismissed by the Ventura County Superior Court as it was determined that the area was undisclosed. Lastly, he was cited for possessing four undersized lobsters in December 2019, 11 undersized lobsters in October 2021, and nine lobsters in December 2021 with no intention of landing them until he had measured them.

Mr. Volaski recognizes that any one of these transgressions would naturally implicate the judgment and qualifications of the licensee/permitholder in question. He further agrees that any violation of law, standards, regulations, or norms justifies careful scrutiny.

However, we wish to note that, over the course of ten years, such transgressions are limited to these specific instances. Mr. Volaski has an extensive career working as a fisherman. He has developed a reputation for his integrity, good character, and intelligent disposition. Thus, while the allegations are concerning, we assert Mr. Volaski's good nature, positive intentions, and well-meaning efforts should be weighed against said violations.

b. Time Elapsed Since Commission Of The Act(s)

The most recent allegation of misconduct occurred in 2021. Thus, it has been over three years since the alleged misconduct.

c. Subsequent Disciplinary Or Legal Actions

Not applicable.

d. Whether The Licensee/Permitholder Engaged In The Original Misconduct Intentionally Or Maliciously

There is no evidence of any malicious or ill-conceived intent with regard to the original misconduct. We understand the Department found unconvincing the arguments advanced by Mr. Volaski in his original hearing regarding the incident(s) in question. However, as no benefit had

resulted from any of the misconduct and Mr. Volaski has not given any indication that he sought to purposefully subvert Department regulations, we assert that no conclusion can be drawn regarding his intent in this situation.

e. Compliance With Disciplinary Or Other Legal Action(s)

Mr. Volaski has fully complied with the suspension order imposed against him.

f. Additional Considerations

The purpose of a reinstatement effort is not to relitigate the underlying circumstances giving rise to the original discipline. On the contrary, any reinstatement inherently implicates and considers the actions taken subsequent to the misconduct.

In this case, Mr. Volaski has been without his license/permit since October 2023. In that time, he has complied with the Department's order(s), while battling [REDACTED] and attempting to provide for his family. Mr. Volaski's father and son are both active and licensed fishermen, with whom he is unable to join due to this suspension.

Given Mr. Volaski's age and health condition, we ask for additional leniency and consideration from the Department with regard to this suspension and its substantive impact on his mental, emotional, and physical health. Mr. Volaski is passionate about his career as a fisherman. He takes tremendous pride in his work and has been struggling without this important activity in his life.

g. Likelihood Of Recurrence

The likelihood of recurrence is minimal. Not only does Mr. Volaski have a career defined by legal compliance and cooperation, but the significant impact of the current penalty thus far imposed has adequately deterred future transgressions. Throughout his entire 40-year career working as a commercial fisherman, Mr. Volaski has been convicted only one time for one wired-open unbaited trap in 2011. He always cooperated with the Department on any matters relating to or in connection with his fishing duties.

While on suspension, Mr. Volaski has fully complied with the terms of his suspension, and has demonstrated the remorse and rehabilitation required to justify future license and permitting.

h. Mitigation Evidence

In support of this reinstatement effort and to demonstrate the sincerity of his remorse, Mr. Volaski has prepared and submitted various mitigation documents for the Department's review and consideration.

Specifically, Mr. Volaski has prepared a personal statement for the Department's review and consideration. This statement outlines the primary basis for Mr. Volaski's request. He describes

the original circumstances which led to the discipline in question and also why he should be trusted to return to his career. (Please see **Attachment A** for "Personal Statement").

In addition, Mr. Volaski has gathered and submitted various character reference letters for the Department's review and consideration. These letters were written by individuals who know Mr. Volaski well and can accurately and meaningfully attest to his character. We ask that these letters be considered as evidence of mitigation. (See **Attachment B** for "Character Reference Letters").

4. CONCLUSION

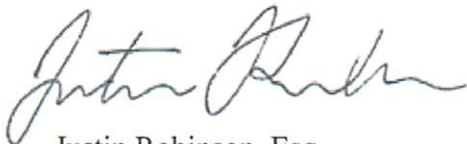
The purpose of disciplinary actions by administrative bodies is not to punish, but to protect the public by discharging those practitioners who are dishonest, immoral, disreputable or incompetent. (*Borror v. Dep't of Investment*, 15 Cal. App. 3d 531, 540 (1971); *Fahmy v. Medical Board of California*, 38 Cal.App.4th 810, 817 (1995)).

Mr. Volaski has demonstrated the rehabilitative effort sufficient and necessary to justify his return to his fishing career. There exists no legitimate basis on which to conclude Mr. Volaski is dishonest, immoral, disreputable, or otherwise incompetent such that continued suspension is an appropriate course of action at this point. We ask that he be allowed to resume his career and passion accordingly.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

UNLOCK LEGAL, APLC

A handwritten signature in cursive script, appearing to read "Justin Robinson".

Justin Robinson, Esq.

Title	Updated Volaski - Reinstatement Support Letter.docx.pdf
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October 29, 2024

To Whom It May Concern,

I am writing to provide a character reference for Mike Volaski, a man I have had the pleasure of knowing for many years. Mike's career speaks volumes about his integrity and dedication. With over 40 years as a fisherman and 31 years as a firefighter, Mike has demonstrated an unwavering commitment to his work, consistently maintaining an impeccable record for work ethic and honesty.

I first met Mike when I was just 10 years old, as my father worked alongside him. Over the years, I had the privilege of sharing many dinners with him at the fire station, and I can say with certainty that Mike has always been an exemplary human being—someone who leads by example, embodies integrity, and is deeply dedicated to his community.

In my professional capacity as an Oxnard Port Commissioner for over 14 years, I've had further opportunities to witness Mike's contributions to the local community. He is a man who doesn't just fulfill his duties but goes above and beyond to make a positive impact on those around him. Without reservation, I can speak to his outstanding character and dedication to serving others.

It is with the utmost confidence that I recommend Mike Volaski. His honesty, hard work, and integrity are unmatched, and he has earned the respect of everyone who knows him.

Sincerely,
Hon. Jason T Hodge
Oxnard Port Commissioner

333 Ponomo Street,
Port Hueneme, CA 93041 805-444-5223

To Whom it May Concern:

Sometimes words cannot capture the experiences we have. The injustice of a 5-year suspension imposed on Mike Volaski for his commercial fishing license and permits is one such experience. The harm this has caused is immeasurable and irreparable.

I implore you to read the letters of character reference written on his behalf. They are written by a renowned former fish and game marine enforcement warden/captain along the CA coast, the president of Ocean Defenders Alliance, a fish buyer, and the Honorable Oxnard Port Commissioner who happens to be the husband of Fiona Ma, CA State Treasurer, and he is the son of one of Mike's former Fire Captains with whom he still keeps in contact. All of these people have known Mike for decades.

Everyone that knows Mike is shocked at the extreme punishment of a 5-year suspension, not just of his license and lobster permit, but also his crab and salmon permits, and all fishing privileges. Mike is a stellar character of integrity. He attended parochial school, K-12, and considered being a priest. To this day, he rarely swears, and he has never used recreational drugs. He became a sworn Peace Officer in 1981, and from 1982-2007, he was a Firefighter and Fire Dept. Prevention Officer for the City of Oxnard. After his wife passed away from [REDACTED] he retired early to raise his young sons.

At the age of four, Mike learned how to check off lobster buoys for his dad on his commercial fishing boat. To this day, Mike's dad, who is now 89, still fishes! All three of Mike's brothers and some of their children are also involved in fishing and make their livelihoods at sea. One of Mike's brothers owns the two largest boats in the Channel Islands Marina. There is a placard of Mike's boat, called Capture, with lobster traps on the stern posted on a walkway outside a popular restaurant at the Channel Islands Marina. Mike's oldest son is also a commercial fisherman, and he is also a firefighter for the County of Los Angeles. The Volaskis are well known at the Channel Islands Marina not only as three generations of fishermen, but also three generations of firemen, as Mike's dad was a firefighter for the Beverly Hills Fire Department.

Mike worked for 20 years instructing and assisting anglers on sport fishing boats in So. CA until he began fishing commercially in 1984. In the 40 years that he fished commercially for lobster, crab, live fish, and salmon, he has been boarded hundreds of times. He has landed over 300,000 legal lobsters and returned over 16,000 undersized lobsters to their habitat. This data is logged.

In Mike's entire 40-year commercial career, he was convicted only once in 2011 for leaving an unfishable wired open lobster trap after the close of the season. He was unable to

retrieve the trap due to adverse weather which is documented. Retrieval time has since been extended.

Mike was 35 years into his lobster career when he was first cited for having undersized lobsters on this boat. His deckhand of 11 years mistakenly told Mike that all lobsters had been measured when they were boarded next to Anacapa Island. After the deckhand made the same error a second time, (at which time he was also cited), Mike let him go. It was unbelievable that the newly trained and licensed deckhand made the same error two years later. The circumstances were all similar in that they took place next to the lobsters habitat, (to which they were returned), by Anacapa Island. It is Mike's protocol to measure the lobsters a second time before they leave their habitat. He had not yet had a chance to do so each time they were boarded.

Mike has never landed an undersized lobster, nor has he ever considered doing so. He would not jeopardize his privilege to earn a living by fishing, a career he has dearly loved. He was accused of being a liar and of having a pattern of breaking the law. Three incidents in 40 years do not prove a pattern. He trained his deckhands. They acknowledged making the errors, and one of them was cited, but unlike Mike, they continue to work.

As mentioned, each incident took place next to Anacapa Island near the lobsters' habitat when they were boarded. Mike had not yet done the secondary measurement. These circumstances do not prove an intent to poach which the Fish and Game publicly accused Mike of doing.

This experience has truly caused so much pain for both Mike and me. The OAH Judge in her Proposed Order submitted to the commission prior to Mike's hearing stated: "A five-year suspension will have a deterrent effect on respondent as well as other licensees by way of example." While I understand that deterring bad actors from engaging in certain behaviors is important, this deterrent effect has a real and tangible effect on our lives.

During the three-day hearing, Mike was retried on each of his four former accusations. Mike's first three accusations were related to the one incident re: traps left out beyond the season in 2011 to which he was convicted by having one wired-open unfishable trap left after the season due to hazardous weather for the size of Mike's boat. The fourth accusation was completely dismissed and destroyed in the Ventura Co. Superior Court. The last accusation re: undersized lobsters in 2021 was still pending in the Ventura Superior Court when the Fish and Game enforced Mike's suspension.

If you spent a little time talking with Mike, you would soon get a feel for his character. When I met him four years ago, it was precisely his integrity that initially attracted me to him. After a few months of dating, I recalled thinking of a quote by Jack Nicholson in a movie when he

said to his new love, "You make me want to be a better man." It was funny to me, because Mike made me feel like I wanted to be a better woman. Of course, we wouldn't be together if our values weren't similar.

I graduated from Pepperdine University with a Master's Degree and elementary teaching credential. A native of Ventura, I have been on, in, or near the Pacific all my life. I, too, love the ocean and it grieves me that this extreme punishment put on Mike for something that he did not do or ever had any intention of doing prevents him, now at age [REDACTED] from enjoying his lifelong passion of fishing and being on the ocean. You have no idea how much it hurts him that he can't even be on the same boat with his father or son.

It has been over a year now since the suspension. Losing his income has placed an extreme financial hardship on him to repay the SBA COVID-19 Injury Disaster Loan he took out for \$240,000 for the business in 2021. Every day has felt like a battle. The stress over the unfairness, slander of his name, forced and premature retirement, and loss of income to repay the loan has been relentless. So much so that Mike was diagnosed with [REDACTED] in April. Since then, he has undergone surgery twice [REDACTED]. He returns in December to be checked again as it is a highly [REDACTED]. And I, too, have unfortunately been hospitalized this year.

Please know that I greatly appreciate you reading this letter. I hope that it has helped to shed light on the unwarranted severity of a 5-year suspension imposed on a man who in all actuality did nothing wrong. Yes, he is Captain of his boat and takes responsibility for the safety of his crew and for working ethically. But he does not have control over what anyone else says or does. People make mistakes, and these errors were simply that. There was never an intention or effort made to fish illegally and land undersized lobsters. A year's suspension, lack of income to repay his loan, the public slander, and diagnosis of [REDACTED] have taken a tremendous toll on both our lives. I sincerely hope that you will help expedite the return of Mike's license and permits as soon as possible.

Thank you,

Claudia Moore

Losing his job may have going forward. Mike didn't need one. His problem was trusting another person to do their job. Based on my experience with boarding officers and some new wardens, I know how difficult that can be.

Based on my experience working Marine, my personal opinion is that it is not in the best interest of the resources, nor the Department, to revoke his permit. As I said, we need more like him, not fewer.

Respectfully,

Gene Martin,
Captain, DFG retired.



Nina Garcia <nina@unlocklegal.com>

Fw: Letter Character Reference

1 message

M [REDACTED]
To: Justin Robinson <justin@unlocklegal.com>

Fri, Nov 1, 2024 at 5:06 PM

----- Forwarded Message -----

From: Mike Volaski [REDACTED]
To: Mike Volaski [REDACTED]
Sent: Saturday, October 26, 2024 at 04:12:37 PM PDT
Subject: Fwd: Letter

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: October 25, 2024 at 4:28:10 PM PDT
To: Mike Volaski [REDACTED]
Subject: Letter

To Whom it may Concern,

I am a retired Fish and game Warden. I spent all but 2 years of my career working Marine Patrol, with better than half in Patrol Boats. I worked Ventura/Santa Barbara Counties beginning in 1973, then boats, starting in Ventura County, beginning in 1982. During my career I ran the Yellowtail, Albacore and Hammerhead. I patrolled the Northern LA county area to Central San Luis County, then later on, from the Mexican Border to San Francisco. During my tenure, we had more boardings, citations and seizures than any of the other patrol boats. My name is still known along the So Cal and Central Cal coastline.

During my career it was my pleasure to know Mike Volaski. I found him to be honest, hardworking and conscientious. I never knew him to intentionally violate any Fish and Game laws, nor did his name arise in discussions with other wardens as a violator. Mike is someone who didn't regard resources as something to be exploited, rather as something to sustain. Having commercial fished myself, I fully understand the pressures that drive some to cheat. Mike didn't fall into that group. And I never knew him to lie to me.

Essentially, the resources need more like Mike, not fewer. It has been my training and experience that "Leopards don't change their spots." To bring about that change, usually a significant emotional experience is involved. Clearly, the deckhand has not suffered one of those enough to change lax measuring habits.



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Carol Boot Storie

Darlene Summers

Chuck Swift

Tom Weisel

Robert Wintner

Mike Wynd

Ocean Defenders Alliance

501(c)(3) nonprofit

#32-0065856

November 1, 2024

To whom it may concern.

I've know Mike Volaski since 2018. I run a non-profit organization that locates and removes abandoned fishing gear. Mostly lobster traps and nets.

Mike has been very supportive and helpful in helping me find this abandoned gear and then finding out who the owners are after I bring them back to the harbor.

While most fisherman have been reluctant to work with me, Mike doesn't hesitate. He is helping my organization keep our underwater world safe from the harm that can come from animals becoming entangled in the trap lines or being stuck in these traps.

He works well with people of varying backgrounds and expertise.

Feel free to call me if you want to find out more about Mike.

Sincerely,

Kurt Lieber

www.oceandefenders.org

714-875-5881



October 29, 2024

To Whom It May Concern,

I am writing to provide a character reference for Mike Volaski, a man I have had the pleasure of knowing for many years. Mike's career speaks volumes about his integrity and dedication. With over 40 years as a fisherman and 31 years as a firefighter, Mike has demonstrated an unwavering commitment to his work, consistently maintaining an impeccable record for work ethic and honesty.

I first met Mike when I was just 10 years old, as my father worked alongside him. Over the years, I had the privilege of sharing many dinners with him at the fire station, and I can say with certainty that Mike has always been an exemplary human being—someone who leads by example, embodies integrity, and is deeply dedicated to his community.

In my professional capacity as an Oxnard Port Commissioner for over 14 years, I've had further opportunities to witness Mike's contributions to the local community. He is a man who doesn't just fulfill his duties but goes above and beyond to make a positive impact on those around him. Without reservation, I can speak to his outstanding character and dedication to serving others.

It is with the utmost confidence that I recommend Mike Volaski. His honesty, hard work, and integrity are unmatched, and he has earned the respect of everyone who knows him.

Sincerely,
Hon. Jason T Hodge
Oxnard Port Commissioner

333 Ponomo Street,
Port Hueneme, CA 93041 805-444-5223

Attachment B

December 1, 2025

To Whom it May Concern:

I am a [REDACTED] year old man who has been in the fishing industry for over 60 years. I retired honorably from the fire department and medical service to our communities in 2007 after 31 years of service. I retired early in order to raise my young sons after my wife passed from [REDACTED] At that point, commercial fishing became my sole source of income.

I have been fortunate to carry on the second generation of three generations of commercial fishermen and firemen. Given a five year suspension of ALL of my fishing privileges, there has been a mid-generation void to be with my dad and son.

With a lifetime of being on the ocean, I have been cited for several misdemeanors, not felonies. All cases were held in the Ventura County Superior Court. After correctional services were completed all cases were either dismissed and/or destroyed. Never was I threatened to have my entire livelihood removed by the court. I fully understand the fishing laws and I have not nor would I break them intentionally.

October 2023 was the first and only time the Fish and Game Commission held an administrative hearing re: three citations that were all ultimately dismissed by the Ventura County Superior Court. However, the Commission not only retried me on all former citations from 2011 and 2013 that were previously dismissed and/or destroyed by the Ventura County Superior Court, they decided to remove ALL of my fishing privileges for 5 years.

Eliminating my livelihood has left me unable to pay on my \$240,000 SBA COVID-19 Injury Disaster Loan government loan, boat payments, slip fees, and yard storage. My son has taken over making all of these payments.

As a sworn Firefighter Peace Officer of the State of California, I made an oath to uphold the U.S. Constitution to fulfill all the responsibilities to save lives, protect property, and the environment. This oath remains with me to this day.

I truly believe that any Fish and Game Warden from the past or present that knows me, knows that I have not denied their duties to inspect my boat, crew, and myself.

It has been four years since I received the last citation. After that citation, I continued to fish consistently and without incident for the second half of the '21-'22 season, the entire '22-'23 season, and the beginning of the '23-'24 season until the suspension was put into effect.

Shortly after the order of suspension, I was diagnosed with [REDACTED] I have since undergone [REDACTED].

As a result of this suspension, a career I have dearly loved all my life has been taken from me. In addition, I have lost years to be on the ocean with my family. I have been financially burdened to maintain my fishing assets, and my health has suffered greatly as I age into my [REDACTED].

As captain of my boat, I know that I am responsible for the safety of my crew and for working ethically. I have never landed an undersized lobster in my entire career and would never consider doing so. Having had time to reflect, given the opportunity and privilege to fish again, I would be diligent to measure the lobsters as soon as possible.

Being my age, I also hope to, again, have the opportunity to be with my family on the ocean.

I would like to respectfully ask the Fish and Game Commission to reevaluate their decision and reinstate my license and permits as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct to the best of my knowledge.

Thank you.

Michael A. Volaski

MIKE VOLASKI

Date: 12 / 01 / 2025

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