

STAFF SUMMARY FOR OCTOBER 7-8, 2015

3. MR. CRAIG YERKINS (CONSENT)**Today's Item**Information Action

Approve request from Mr. Craig Yerkins to reinstate Transferable Dungeness Crab Vessel Permit No. CT0068-T7 for F/V *Terry S*, per the settlement agreement between DFW and Craig Yerkins.

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

On Apr 2, 2015, Craig Yerkins, the managing owner of F/V *Terry S* (FG03513), submitted to DFW a renewal request for Dungeness Crab Vessel Permit No. CT0068-T7). In his request he explained that he did not submit the renewal request by the deadline because a family member was experiencing a terminal illness.

DFW license records show that F/V *Terry S* held a valid 2013-2014 TDCVP, making the TDCVP eligible for renewal for the 2014-2015 permit year. On Apr 9, 2015, DFW denied Mr. Yerkins' renewal request pursuant to Fish and Game Code, Section 7852.2(c), which states that DFW shall deny any application for renewal received after Mar 31 of the permit year following the year in which the applicant last held a valid permit for that fishery. Mr. Yerkins missed the deadline by two days.

Upon receiving Mr. Yerkins' appeal of DFW's decision, FGC staff approached DFW about a potential settlement agreement. DFW and Mr. Yerkins have signed a settlement agreement (Exhibit 1); DFW will not oppose the renewal request and within 60 days of FGC's decision Mr. Yerkins will pay all fees owed.

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

Approve request from Mr. Craig Yerkins to reinstate Transferable Dungeness Crab Vessel Permit No. CT0068-T7 for F/V *Terry S*, per the settlement agreement between DFW and Mr. Yerkins.

Exhibits

1. Settlement agreement between DFW and Craig Yerkins, dated Sep 8, 2015 (includes as appendices Mr. Yerkin's appeal letter to FGC and DFW's letter denying his request to renew DCVP)

Motion/Direction

Moved by _____ and seconded by _____ that the commission adopts the Consent Calendar, items 2-6.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made between the Department of Fish and Wildlife ("DFW") and the owners of the *F/V Terry S* (Craig Yerkins, Dave McCornack, Troy McCornack, and Lyle Winfrey) (individually, a "Party," and collectively, "Parties").

I. Recitals

The Parties execute this Agreement with reference to and in contemplation of the following facts:

- a. Craig Yerkins, Dave McCornack, Troy McCornack, and Lyle Winfrey ("Vessel Owners") own *F/V Terry S* (FG03513), a commercial fishing vessel with Dungeness crab vessel permit number CT0068-T7 ("DCVP").
- b. DFW license records indicate that the DCVP was last valid during the 2013-14 permit year, making it eligible for renewal in 2014-2015, but not 2015-2016.
- c. On April 2, 2015, Craig Yerkins, the Managing Owner of the *Terry S*, submitted to DFW a request to renew the DCVP. ("Renewal Request;" Exhibit A.) In the Renewal Request, Mr. Yerkins explained he did not submit the Renewal Request by the deadline because a family member was experiencing a terminal illness.
- d. On April 9, 2015, DFW denied the Renewal Request pursuant to Fish and Game Code Section 7852.2 (Section 7852.2), subdivision (c). (Exhibit B.) Section 7852.2, subdivision (c) states "The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery." For DFW to grant the Renewal Request, the Vessel Owners would have had to submit it along with applicable fees by March 31, 2015. The Vessel Owners missed the deadline by only two days.
- e. Section 7852.2, subdivision (d), states "An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." On April 21, 2015, The Vessel Owners submitted to the California Fish and Game Commission ("Commission") a request for an appeal of DFW's denial of their Renewal Request. (Exhibit C.)
- f. Section 7852.2, subdivisions (a) and (b) state:
 - (a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:
 - (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).
 - (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).
 - (3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).
 - (b)

- (b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713."
- g. Pursuant to Section 7852.2, subdivisions (a) and (b), The Vessel Owners would owe \$3,741.50 in fees if the Commission reinstates the DCVP. (Exhibit D.)
- h. The Parties understand that this Agreement is solely between DFW and the Vessel Owners and that the Commission is neither a signatory to it nor bound by it in any way. Furthermore, the Parties understand that pursuant to Section 7852.2, subdivision (d), the Commission, and not DFW, has the sole discretion to approve or deny the Renewal Request.
- f. For the purpose of saving time and costs associated with an appeal hearing, the Parties agree to compromise and settle these issues. In light of recent discussions between DFW and Mr. Yerkins, the Parties have come to an agreement on terms upon which they can resolve this matter.

II. Terms

The Parties hereby agree to the following:

- a. DFW agrees to not oppose the Renewal Request.
- b. If the Commission reinstates the DCVP, the Vessel Owners agree to fully pay all fees owed pursuant Section 7852.2, subdivisions (a) and (b), within 60 days of the Commission's decision. DFW shall not issue the DCVP or buoy tags until all fees are paid.
- c. The Parties agree that this Agreement, all documents attached to this Agreement, and documents previously submitted to the Commission related to the Renewal Request constitute the Vessel Owners' written appeal pursuant to Section 7852.2, subdivision (d), provided that the Commission considers the Renewal Request at an upcoming Commission meeting. Each Party may, at its discretion, address the Commission at a Commission meeting regarding the Renewal Request, so long as the address is consistent with the terms of this Agreement. In addition, DFW or the Vessel Owners may submit a memorandum or other documents to the Commission requesting that it take action on the Renewal Request, so long as these documents are consistent with the terms of this Agreement.
- d. This Agreement is intended to be a full and complete settlement of all disputes between the Parties pertaining to the Renewal Request. Provided that the Commission considers the Renewal Request at an upcoming Commission meeting, the Vessel Owners agrees to waive any present and future administrative appeal related to this renewal of the DCVP, the April 9, 2015 denial of the Renewal Request, and all future claims and/or causes of action against DFW related to renewing the DCVP.

- e. This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecute, instituted or attempted by any Party in breach thereof.
- f. This Agreement is only applicable to the Vessel Owners' Renewal Request. This Agreement does not relate in any way to the Vessel Owners' general Commercial Fishing License or any other DFW-issued entitlement held by the Vessel Owners.
- g. Each party shall bear its own costs and attorneys' fees, and any other expenses, related to the Renewal Request subject to resolution by this Agreement.
- h. The obligations of this Agreement apply to and are binding on DFW or any successor agency or department and the Vessel Owners and his respective heirs, executors, administrators, and permitted assigns.
- i. The Parties represent and warrant to each other that the execution of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on each Party and is enforceable in accordance with its terms.
- j. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall remain in full force and effect.
- k. This Agreement constitutes the entire understanding between the Parties as to the Renewal Request and can only be amended or modified in writing, signed by duly authorized representatives of the Parties. This Agreement supersedes all prior representations and agreements, if any, between the Parties regarding the Renewal Request.
- l. This Agreement, when signed by all of the signatories, shall become effective as of the last signature date.
- m. This Agreement may be signed in counterparts, which together shall constitute one and the same Agreement. A facsimile or scanned signature shall be the same as original.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date of the last signature below:

<p><i>for</i> <u>James Fong</u> Department of Fish and Wildlife</p>	<p><u>Craig Yerkins</u> Managing Owner, Terry S</p>
Date: <u>9/8/15</u>	<u>9-8-15</u>

AUG/31/2015/WON 01:26 PM

FAX No.

F. UUS

Exhibit A

Attention Ruth Flores

RECEIVED

APR 02 2015

CDPW-NR EUREKA LICENSE

To Whom it may concern,

We are requesting a reinstatement of crab permits of Terry S. Document # 502334 Fish and game # 03613. Due to long illness of family member ending in death fees were not paid on time. All 4 owners are actively participating in crabbing on the one and all as Deck hands.

CDPW Reinstated APR - 6 2015 BY LRB

Thank you,

Craig Yerkins - Craig Yerkins 4-2-15

Troy McCormack - Troy McCormack 4-2-15

Lyle Winfrey - Lyle Winfrey 4-2-15

David McCormack McCormack

CDPW-NR EUREKA LICENSE

APR 02 2015

RECEIVED

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FAX NO.

F. 007

Exhibit B



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

EDMUND G. BROWN JR, Governor
CHARLTON H. BONHAM, Director



Certified Mail

April 9, 2015

Mr. Craig E. Yerkins

Subject: NOTICE OF DENIAL FOR A TRANSFERABLE DUNGENESS CRAB VESSEL PERMIT, PERMIT NUMBER CT0068-T7, FOR THE F/V Terry S. (FG03513)

Dear Mr. Yerkins:

This is in response to your request to reinstate the Transferable Dungeness Crab Vessel Permit (TDCVP), Permit Number CT0068-T7, for the F/V Terry S. (FG03513).

Authority-Dungeness Crab Vessel Permit

Under Fish and Game Code (FGC) Section 8280.2(c), states applications for renewal of all Dungeness crab vessel permits shall be received by the Department of Fish and Wildlife (Department), or, if mailed, postmarked, by April 30 of each year. In order for a vessel to retain eligibility, a permit shall be obtained each year subsequent to the initial permit year and the vessel shall be registered pursuant to Section 7881.

Authority-Late Renewal Applications

Effective April 1, 2008 pursuant to FGC Section 7852.2, a graduated late fee was established for any renewal application that is received after the deadline.

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

Reason for Appeal to the Department

In the letter received April 2, 2015, you are requesting reinstatement of the TDCVP for the F/V Terry S. You state that due to long illness of a family member ending in death, fees were not paid on time.

Documentation Submitted

None

Department Findings

Department license records show that the F/V Terry S held a valid 2013-2014 TDCVP, which made you eligible to renew the permit for the 2014-2015 permit year.

Conserving California's Wildlife Since 1870

Mr. Craig E. Yerkins
April 9, 2015
Page 2

Department Recommendation

Based on the previously stated information, your request to reinstate the TDCVP for the *F/V Terry S* is denied, because the *F/V Terry S* last held a valid TDCVP in the 2013-2014 permit year. The Department received your request to renew the TDCVP for the *F/V Terry S* on April 2, 2015. FGC Section 7852.2(c), states the Department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

Deadline to File an Appeal to the Fish and Game Commission

If you wish to appeal the Department's decision, you must submit a written request to the Fish and Game Commission (Commission) at 1416 Ninth Street Sacramento, California 95814. Pursuant to FGC Section 7852.2(d), your appeal must be received within 60 days of this letter. The Commission, upon consideration of the appeal, may grant renewal. If the Commission grants renewal, it shall assess the applicable late fee.

The Commission will review the information you submit and will notify you in writing if your appeal will be scheduled before the Office of Administrative Hearings. If the Commission should recommend approval, full payment of \$3,741.60 would be due 60 days after receipt of the Commission's approval letter. A fee schedule is enclosed.

If you have any questions or require further assistance, please contact Ms. Ruth Flores, of my staff, at the letterhead address, by telephone at (916) 928-7470, or e-mail Ruth.Flores@wildlife.ca.gov.

Sincerely,



James Fong, Chief
License and Revenue Branch

cc: Mr. Sonke Mastrup
Fish and Game Commission
Sacramento, California

Mr. David C. McCormack
Mr. Troy D. McCormack

Mr. Lyle A. Winfrey

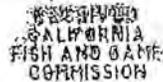
Ms. Ruth Flores
Department of Fish and Game
Sacramento, California

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FAX NO.

F. 010

Exhibit C



To: California Fish & Game Administrative Hearings

Regarding: Reinstatement of F/V Terry S tier seven crab permit

2015 APR 21 PM 1:55

Current owners:

Dave McCormack:

Dave has been crabbing for Don Standley as a deckhand for 25 years, 6 years on the F/V Terry S 7 years on the F/V Ferro-Mald, and 13 years on the F/V One and All. Dave's efforts helped the F/V Cue and All earn a tier one permit and currently fishes on that boat.

Lyle Winfrey:

Lyle has also crabbed for 25 years, on the same boats, for the same captain. He is currently a deckhand on the F/V One and All and helped it earn a tier one permit.

Troy McCormack:

Troy is Dave's only son and has crabbed on the F/V One and All For 6 years. He used go on Terry S sport salmon fishing trips when he was a child.

Craig Yarkins:

Craig has crabbed on the F/V One and All for 10 years and also helped it qualify for a tier one permit. Craig is the managing owner of the F/V Terry S.

F/V Terry S history:

The F/V Terry S is a 42 ft, wood boat, built in 1926. It has been moored in Eureka California since 1991. It crabbed from 1991-1996 and has been inactive in the crab fishery from 1996 to present day. It fished rock cod from 1991 thru 2002. From 2003 to present day, though licensed, the Terry S has been inactive in all fisheries. From 2002 until around 2007, it was used as a platform to sell crab retail to the public. In 2013, the Terry S was sold to us by Don Standley, our captain of many years, for a hundred dollars each (\$400). The low price reflecting his desire to reward all of us for many years of service.

The Terry S was a project boat as 13 years of winter rains and neglect had caused dry rot in her starboard bow bulwarks. In the summer of 2014, we started repairs. We had opened a can of worms, the rot had spread to many planks and under the fiber glassed bow deck. We have replaced most of the planks but are far from being finished. To date the Terry S is not ready to fish.

*Craig Yarkins
Troy McCormack
Lyle A. Winfrey
David McCormack*

April 2nd 2015:

Through the years, we all have become like a family. Every season, usually in March, we all go to the local Eureka Fish & Game office and renew our licenses. Don usually pays for everything then deducts the cost from our checks. It was routine that on April 2nd 2015 we met in boat basin parking lot and together went to F & G to renew our licenses for the 2015 season. We were horrified to find there was no record of paying the crab permit fees for 2014. We were sure that we had paid for 2014, so we went to the boat and got the receipt, proof showing that on January 24th 2014 we paid \$1900.00. Back to Fish & Game we went, records confirmed that we had paid the \$1900.00 renewal. The nightmare only got worse, the 2014 payment was for the 2013 season and the Terry S crab permit was no longer valid! We were a year late! We then discovered that Monday, March 31st, was a holiday and had we come in the day before we could have paid for the 2014 and 2015 seasons and still have a crab permit.

The Aftermath:

The gals at Fish & Game were helpful in starting us down the road of hopefully getting our crab permit back. They mailed our letter asking for permit reinstatement to Ruth Flores understanding she would have to deny it before the Fish and Game Commission could review our case.

Looking back, the latter part of March, we were working on the F/V One and All everyday, trying to find the cause of massive amounts of bubbles in our engine coolant. Had we not broke down, we would have probably gone in sooner to renew our licenses thus discovering this huge mistake. We surely would not spend the summer of 2014 doing repairs to the Terry S only to not pay the crab permit rendering the boat worthless. The Terry S is our future.

Why didn't we pay for 2014?

1. We thought we did.
2. We somehow lost track that we were behind a year in 2013. We had to go through our records to remember when we bought the boat.
3. Craig Yerkins, our managing owner, was overwhelmed by the passing of his 82 year old mother on April 5th 2014. She and required 24hr care. Craig, her only son, was in charge of her care before she passed and her estate after she was gone. He has been paying the rent on her mobile home for the last year and is not yet finished fixing it so it can be sold. He takes ultimate responsibility and feels sick every time he thinks about it.
4. We are all working full time as deckhands and are new to the process of being boat owners.
5. Dave McCormack has
6. Confusion, lack of communication, reliance on the captain to renew our licenses every prior season.
7. Getting our pot tags in May of 2014 reinforced the idea that 2014 had been paid.

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FAA No.

P. 013

In Closing:

We have included copies of Craigs moms death certificate, Coast Guard documents, Fish & Game receipts, and boat work receipts from the summer of 2014, to verify our claims. Please help us.

Thank You

AUG/31/2015/MON 01:27 PM

FAX No.

P. 014

Exhibit D

Mr. Craig E. Yerkins
 Fees Required for Reinstatement for a
 Dungeness Crab Vessel Permit
 Permit Number CT0068-T7
 F/V Terry S (FG03513)

Prior Year Fees	Permit Fees
2014-2015 Commercial Boat Registration	\$ 351.50
Dungeness Crab Vessel Permit	\$ 283.25
Late Fee (61 days to March 31, 2015)	\$ <u>601.25</u>
	1,216.00

Prior Year Fees Due \$ 1,216.00

Prior year permit fees must be paid before a 2015-2016 DCVP can issued.

Current Year Fees	
2015-2016 Commercial Boat Registration	\$ 350.00
Dungeness Crab Vessel Permit	\$ 287.00
Biennial Dungeness Crab Trap Limit Permit/Buoy Tags	\$ <u>1,882.50</u>
	\$ 2,525.50

Total Current Fees Due \$ 2,525.50
 Total Fees Due \$ 3,741.50

If the Fish and Game Commission should recommend approval, full payment of \$3,741.50 would be due within 60 days after receipt of the Commission's approval letter.