4. MR. ROBERT JACKSON (CONSENT)

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

Approve request from Mr. Robert Jackson to reinstate Transferable Dungeness Crab Vessel Permit No. CT0215-T7 for F/V *Brooke Michelle* (FG70433), per the settlement agreement between DFW and Mr. Jackson.

Summary of Previous/Future Actions (N/A)

Background

On Apr 23, 2015, Mr. Robert Jackson, owner of F/V *Brooke Michelle* FG70433), submitted to DFW a renewal request to renew Dungeness Crab Vessel Permit No. CT0215-T7 (DCVP). In his request he explained that he did not submit the renewal request by the deadline because a family member was experiencing an illness and he needed to care for his children while his wife tended to the ill family member.

DFW license records indicate that the DCVP for F/V *Brooke Michelle* was last valid during the 2013-2014 permit year, making it eligible for renewal in 2014-2015, but not 2015-2016.

On May 7, 2015, DFW denied Mr. Jackson's renewal request pursuant to Fish and Game Code, Section 7852.2(c), which requires DFW to deny any application received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery. Mr. Jackson missed the deadline by only 23 days.

Upon receiving Mr. Jackson's appeal of DFW's decision on May 22, 2015, FGC staff approached DFW about a potential settlement agreement. DFW and Mr. Jackson have signed a settlement agreement (Exhibit 3); DFW will not oppose the renewal request and within 60 days of FGC's decision Mr. Jackson will pay all fees owed.

Significant Public Comments (N/A)

Recommendation

Approve request from Mr. Robert Jackson to reinstate Transferable Dungeness Crab Vessel Permit No. CT0215-T7 for F/V *Brooke Michelle* (FG70433), per the settlement agreement between DFW and Mr. Jackson.

Exhibits

1. Settlement agreement between DFW and Robert Jackson, dated Sep 2, 2015 (includes as appendices Mr. Jackson'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 Robert Jackson (individually, a "Party," and collectively, "Parties").

I. Recitals

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

a. Mr. Jackson owns F/V *Brooke Michelle* (FG70433), a commercial fishing vessel with Dungeness crab vessel permit number CT0215-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 23, 2015, Mr. Jackson submitted to DFW a request to renew the DCVP. ("Renewal Request;" Exhibit A.) In the Renewal Request, Mr. Jackson explained he did not submit the Renewal Request by the March 31, 2015 deadline because a family member was experiencing an illness and he needed to care for his children while his wife tended to the ill family member.

d. On May 7, 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, Mr. Jackson would have had to submit it along with applicable fees by March 31, 2015. Mr. Jackson missed the deadline by only 23 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 May 22, 2015, Mr. Jackson submitted to the California Fish and Game Commission ("Commission") a request for an appeal of DFW's denial of his 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) 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), Mr. Jackson would owe $4,013.16 in fees if the Commission reinstates the DCVP. (Exhibit D.)

h. The Parties understand that this Agreement is solely between DFW and Mr. Jackson 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.

i. 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. Jackson, 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, Mr. Jackson 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 Mr. Jackson's 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 Mr. Jackson 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, Mr. Jackson 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 Mr. Jackson's Renewal Request. This Agreement does not relate in any way to Mr. Jacksons' general Commercial Fishing License or any other DFW-issued entitlement held by Mr. Jackson.

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 Mr. Jackson 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 an original.

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

for By: Maria Melchione
James Fong
Department of Fish and Wildlife

Date: 9/2/15

Robert L. Jackson
Robert Jackson

9-2-15

Exhibit A

Gmail

B B < >

crab permit reinstatement

1 message

B B < Tue, May 5, 2015 at 10:38 AM

To: Ruth.Flores@wildlife.ca.gov

Ruth,

Iam writing in reference to the letter sent to you on April 23, 2015 requesting reinstatement of my Dungeness Crab Permit.My personal license # is L10740 and I own and operate the vessel Brooke Michelle # 70433 which has the tier 7 Dungeness Crab Permit.

Thank You

Sincerely
Robert Jackson

Letter Sent to

Ruth Flores

April 23, 2015

Ruth Flores, Commercial Fishing Analyst

Dear Ruth,

I am writing in response concerning my California Dungeness Crab Permit.

First, I would like to take this opportunity to apologize for the inconvenience and also to thank you for taking time review my situation. I fished, 2012/2013 in California and started the 2013/2014 season in Northern California and Southern Oregon (Crescent City and Brookings.

Because the fishing was so poor the first couple days we did not even set all the gear in Oregon and stacked all the gear on the beach. I tried to arrange pot shipping to Newport, during Xmas to try to salvage some kind of a season. By the time we moved all the gear and ran the boat to Newport we were two weeks into the season and the best fishing was over.

During that time the 2014 renewal was placed with the boat documents and licenses in the file on the boat. We stayed in Newport, fishing was slow and finished the season in Astoria, not returning to California.

This season I chose to stay in Washington and start on the late season in January and not fish Oregon or California.

Because of family and health issues in the family I have had to leave the boat and be home to care for the children while my wife was away

from home, with her mother in the hospital and caring for her thereafter.

When I returned to the boat in Westport approximately April 7,2015 I discovered that I had missed the deadline of March 31,2015 to renew my California license by only a few days. I was in a complete panic because of the way my family situation was and resulted in me missing the deadline.

That is when I called Tommy Ancona, my friend to see what I should do and how to approach this situation.

I have been a commercial fisherman since I was a young boy, 48 years ago, and would never have intentionally not renewed my crab permit. Because of everything going on at home and the unusual circumstances it was just a plain oversight that will financially devastate my family.

During construction of the Brooke Michelle in Fort Bragg, California the pot limit was being introduced and I was assuming we would have a top tier permit with our landings on the coast. As you know we were not able to use our out of state landings and end up with a tier 7 permit. This also was financially devastating for me, especially when building a new boat in California to fish in California.

I have spent thousands and thousands of dollars on renewals and thousands on the appeal to try to get a lager tier which I was denied because of the outside landings. I would not have done that if I had not planned on renewing my license.

Once again if not for the unusual circumstances this would never have happened. I am just sick about this situation and would hope that you

and the department would consider the circumstances and PLEASE help me with this matter.

Thank you for your understanding and cooperation.

Sincerely,

Robert Jackson

Robert L. Jackson

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

Cert. Mail
from Dept. of F&W

Certified Mail

May 7, 2015

Mr. Robert L. Jackson

Subject: **NOTICE OF DENIAL FOR A TRANSFERABLE DUNGENESS CRAB VESSEL PERMIT, PERMIT NUMBER CT0215-T7, FOR THE F/V *Brooke Michelle* (FG70433)**

Dear Mr. Jackson:

This is in response to your request to reinstate the Transferable Dungeness Crab Vessel Permit (TDCVP), Permit Number CT0215-T7, for the F/V *Brooke Michelle* (FG70433).

Authority-Dungeness Crab Vessel Permit
Under Fish and Game Code (FGC) Section 8280.2(e), 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 if the permit year following the year in which the applicant last held a valid permit for that fishery.

Reason for Appeal to the Department
In your April 23, 2015 letter, e-mailed on April 24, 2015, you are requesting reinstatement of the TDCVP for the F/V *Brooke Michelle*. You state that the 2014 renewals were placed in a file on the boat. You explain that because of family and health issues in the family you had to leave the boat and return home. You further explain that when you returned to the boat in Westport, you discovered that you missed the deadline to renew the California license.

You also state that you have paid thousands of dollars on renewals and for the appeal for a larger tier assignment for crab trap tags, which was denied. You would not have done that if you had not planned to renew your license.

Documentation Submitted
None

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

Department Determination
Based on the previously stated information, your request to reinstate the TDCVP for the F/V *Brooke Michelle* is denied, because the F/V *Brooke Michelle* last held a valid TDCVP in the 2013-2014 permit year. The Department received your request to renew the TDCVP for the F/V *Brooke Michelle* on April 24, 2015. FCG 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 $4,013.16 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,

for Maria Melchione
James Fong, Chief
License and Revenue Branch

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

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

Exhibit C

Dear Fish and Game Commission: 5-22-2015

My name is Robert Jackson (L10740) who owns and operates the F/V Brooke Michelle (FG70433) which has Dungeness Crab Vessel Permit #CT0215-T7. I am writing to appeal the denial for reinstatement of this permit. On April 7, 2015, I returned to the F/V Brooke Michelle and immediately realized that I had missed the deadline by only a few days (March 31, 2015) to renew my crab permit, due to family health issues and unusual circumstances. At that time, I called Tommy Ancona and we contacted Ruth Flores, and she advised me of the steps I needed to take to move forward. I have enclosed the letter to Ruth Flores and the certified letter from the Department of Fish and Wildlife.

The reason I missed the deadline on March 31, 2015 was because I was called home away from my boat and fishing to care for our two young children while my wife Kim was in Seattle at the and thereafter to care for her sick mother. My renewal was on the F/V Brooke Michelle during that time.

At the end of February, my wife, Kim was notified by her parents that her mother June was

Due to the circumstances of Kim being away from home to care for her mother and being in and out of the hospital , I had to come home to care for our children and I mistakenly missed the deadline for the renewal while I was away from the boat. The renewal was on the boat with the other licenses, and on April 7, 2015 I realized that I had missed the deadline amidst all the family emergencies.

As of date, Kim has been travelling back and forth to mother and father. If you would like to verify any of this information, please contact Kim and she will be able to supply you with medical records). I have also included the contact information of the physicians at

Thank you.

Sincerely,

Robert L. Jackson

Robert L. Jackson

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
2015 JUN -1 PM 2:22

Exhibit D

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

Mr. Robert L. Jackson
Fees Required for Reinstatement for a
Dungeness Crab Vessel Permit
Permit Number CT0215-T7
F/V Brooke Michelle (FG70433)

Prior Year Fees	**Permit Fees**
2014-2015 Nonresident Commercial Fishing License	$ 134.93
Nonresident Commercial Boat Registration	$ 351.50
Nonresident Dungeness Crab Vessel Permit	$ 283.25
Late Fee (61 days to March 31, 2015)	$ 581.25
	1,350.93
Prior Year Fees Due	**$ 1,350.93**

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

Current Year Fees	
2015-2016 Nonresident Commercial Fishing License	$ 136.73
Nonresident Commercial Boat Registration	$ 356.00
Nonresident Dungeness Crab Vessel Permit	$ 287.00
Biennial Dungeness Crab Trap Limit Permit/Buoy Tags	$ 1,882.50
	$ 2,662.23
Total Current Fees Due	**$ 2,662.23**
Total Fees Due	**$ 4,013.16**

If the Fish and Game Commission should recommend approval, full payment of $4,013.16 would be due within 60 days after receipt of the Commission's approval letter.