

STAFF SUMMARY FOR OCTOBER 19-20, 2016

10. EXECUTIVE SESSION**Today's Item**Information Action

- (A) Pending litigation to which FGC is a party: See agenda for complete list of litigation.
- (B) Possible litigation involving FGC: None to report at the time the binder was prepared.
- (C) Staff performance and compensation: Update on staffing.
- (D) Deliberation on license and permit items: Review and take action on the Petition for Reinstatement of Commercial Fishing Privileges for Jack Morici

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

(A) The agenda lists pending civil litigation to which the Commission is a party.

(D) The Commission permanently revoked the commercial fishing license of Mr. Jack Morici on June 26, 2008. On February 11, 2015, Mr. Morici requested an opportunity for reinstatement of his license. The request was referred to the Office of Administrative Hearings that conducted a hearing and ultimately filed a Proposed Decision (Exhibit 1) that found Mr. Morici did not meet his burden for obtaining the restoration of his license. Exhibit 2 is an unsigned decision adopting the proposed decision.

Recommendation

(D) **FGC staff:** Formally adopt the proposed decision in the Morici petition consistent with the recommendation of the OAH administrative law judge.

Exhibits

1. [Proposed Decision In the Matter of the Petition for Reinstatement of Commercial Fishing Privileges for Jack Morici](#)
2. [\[Unsigned\] Decision In the Matter of the Petition for Reinstatement of Commercial Fishing Privileges for Jack Morici](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the drafted decision In the Matter of the Petition for Reinstatement of Commercial Fishing Privileges for Jack Morici.

BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of Commercial Fishing
Privileges for:

JACK MORICI,

Petitioner.

Case No. 15ALJ01-FGC

OAH No. 2015080891

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on April 11 and July 7, 2016.

J. Michael Warns, Esq., represented petitioner Jack Morici on April 11, 2016. Robert K. Steinberg, Esq., represented petitioner on July 7, 2016.

David Kiene, Senior Staff Counsel, California Department of Fish and Wildlife (Department), appeared and opposed the petition.

The matter was submitted on July 7, 2016.

FACTUAL FINDINGS

1. On a date not established, the Fish and Game Commission (Commission) licensed petitioner as a commercial fisherman, license number L-08140. On June 6, 2005, the Commission revoked that license for 18 months, finding petitioner had exceeded limits for landings of sablefish and shortspine thornyhead in September and October 2003, and that he had been convicted in 2002 and 2004 of having inaccurate landing receipts and unlawful possession or operation of a net, trap, or line.

2. In 2007, after the 18 months ended, petitioner requested reinstatement of his license. The Department opposed the request and argued the Commission should revoke the license permanently, alleging petitioner had engaged or assisted in commercial fishing even after he lost his license. The Commission found petitioner had helped launch and recover his son's commercial fishing boat during the revocation period, unloaded fish from the boat in

2006 while not employed by a fish buyer, and assisted with commercial fishing while on board in November 2006, none of which was allowed after he lost his license. Given his violation history, the Commission also found he was unable or unwilling to comply with the law. Therefore, the Commission revoked his license permanently on June 26, 2008.

3. On February 11, 2015, the Commission received a letter from petitioner asking to speak in person to the Commission “[a]nd hopefully get my commercial fishing license back.” In response, the Commission requested the services of the Office of Administrative Hearings as a hearing officer on the reinstatement request. The hearing was originally set for February 2016, but was continued once at the Department’s request, and again at petitioner’s request after the hearing began.

4. The Commission gave the Office of the Attorney General notice of the hearing, but no one from that office appeared. (See Gov. Code, § 11522.)

Rehabilitation Evidence

5. Petitioner apologized for his “stupid” conduct in the past, and expressed considerable remorse for it. Before losing his license, he was a commercial fisherman for decades, and loved doing it. He seeks “one more chance” to fish commercially with his two sons, who also became commercial fishermen and boat captains. He is upset his sons are the ones out fishing and supporting him, and testified he has learned to be more patient and thoughtful about what he is doing.

6. Petitioner currently works as “administrator” for Morici, Inc., the family fishing business he used to operate before his license was revoked. Now, his sons run the business and captain the boats, while he performs tasks such as completing paperwork, buying boat equipment, driving boats to the mechanic, and notifying federal officials when a boat is out of service. In addition to his job at Morici, Inc., he also works for a fish buyer separating live fish from dead ones at the dock, and as a driver for his wife’s fishing business, which imports fish from Mexico to California. He denies fishing commercially since his permanent revocation in 2008.

7. Antonio Jack Morici, petitioner’s younger son, is the captain of three vessels for Morici, Inc. He also testified his father has nothing to do with catching the fish out on the ocean, and does not go on the boats during fishing trips. His father will sometimes help on land to put fish in tanks when the boats return, but does not help with anything on the vessels, and is more in charge of company paperwork. He believes his father has “learned his lesson” and deserves a second chance. Reinstating his father’s license would lighten the weight on his own shoulders as a 23-year-old supporting the family.

8. Petitioner is 52 years old. He attends church about once a month.

Other Evidence

9. Three Department witnesses described the conduct that prompted the Commission to revoke petitioner's license. Their testimony and investigative reports demonstrate petitioner's conduct involved dishonesty and disregard for commercial fishing laws, and substantial violations of fishing limits.

10. In January 2016, a Department warden observed petitioner with commercial fishing longlines in a truck at a Santa Barbara fishing pier. Antonio Morici confirmed his father has delivered baited longlines to a docked boat before it departed. The Department asserts petitioner was not allowed to do this after he lost his license. Petitioner also acknowledged providing unspecified fishing advice on occasion to his sons; the Department asserts he was not allowed to do this either.

LEGAL CONCLUSIONS

Legal Standards

1. "A person whose license has been revoked . . . may petition the agency for reinstatement . . . 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." (Gov. Code, § 11522.) "Agency" includes "the state boards, commissions, and officers" to which the Administrative Procedure Act applies, including the Commission. (Gov. Code, §§ 11410.20, subd. (a), 11500, subd. (a).) The petitioner "shall be afforded an opportunity to present either oral or written argument before the agency itself," unless "the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide." (Gov. Code, §§ 11500, subd. (a), 11522.)

2. Here, the Commission appointed the Office of Administrative Hearings as its hearing officer to receive evidence on the petition and make recommendations through a proposed decision. (See Fish & Game Code, § 309; Cal. Code Regs., tit. 14, 746.) The Commission has adopted due process safeguards for such reinstatement hearings, (Cal. Code Regs., tit. 14, 746), but no specific criteria a petitioner must satisfy. Generally, the key issue on reinstatement is whether the former licensee is sufficiently rehabilitated. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) Rehabilitation usually involves evidence of positive steps taken by the former licensee. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 318.) Examples of rehabilitation evidence include:

- a. Testimony and letters from character witnesses attesting to the licensee's good character. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1095; *Housman v. Board of Medical Examiners*, *supra*, 84 Cal.App.2d at p. 316.)

- b. Evidence of a change in attitude from that which existed at the time of the conduct in question. (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149; see also Cal. Code Regs., tit. 10, § 2911, subd. (n) [Bureau of Real Estate rehabilitation criteria for license reinstatement].)
- c. Acknowledgment of wrongdoing. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315.)
- d. Evidence of volunteer work and community service. (*Marek v. Board of Podiatric Medicine* (1993) 16 Cal.App.4th 1089, 1099.)
- e. Evidence of activity in religious or community organizations. (*In re Scott* (1991) 52 Cal.3d 968, 976.)
- f. Evidence of educational classes or other training for economic self-improvement, or to keep up with a profession. (See Cal. Code Regs., tit. 10, § 2911, subd. (i); *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 545.)

3. The nature and severity of the misconduct are also relevant, (*Crandell v Fox* (1978) 86 Cal.App.3d 760, 766-767), as is the time elapsed since it occurred. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) The amount of rehabilitation evidence required varies according to the seriousness of the misconduct. (*In re Menna* (1995) 11 Cal.4th 975, 987.)

4. “[I]n a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated and is entitled to have his license restored, and not on the [agency] to prove to the contrary.” (*Housman v. Board of Medical Examiners, supra*, 84 Cal.App.2d at p. 315.) To meet this burden, petitioner must prove rehabilitation by clear and convincing evidence to a reasonable certainty. (*Ibid.*; see also *Hippard v. State Bar, supra*, 49 Cal.3d at pp. 1091-1092.) Clear and convincing evidence “requires a finding of high probability,” and has been described as “requiring that the evidence be “so clear as to leave no substantial doubt”; “sufficiently strong to command the unhesitating assent of every reasonable mind.” [Citation.]” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Analysis

5. Petitioner presented some evidence of rehabilitation. It has been almost a decade since the last act of misconduct underlying his revocation. (Factual Finding 2.) He acknowledged past wrongdoing and expressed remorse. (See Factual Finding 5.) He has not fished on commercial boats since his permanent revocation, according to both him and his son. (Factual Findings 6, 7.) He also attends religious services. (Factual Finding 8.)

6. Furthermore, the Department’s assertions that petitioner violated the law by delivering longlines to a docked boat and giving fishing advice are unpersuasive. While a

revoked commercial licensee may not “engage in that fishery,” (Fish & Game Code, § 7857, subd. (i)), the word “fishery” in the statute means “[f]ishing for, harvesting, or catching” marine fish or plants. (Fish & Game Code, § 94), and the word “engage” generally “relate[s] to and connote[s] frequency and continuity of action.” (*City of Los Angeles v. Cohen* (1954) 124 Cal.App.2d 225, 228.) Delivering longlines to a docked boat and giving fishing advice fall far short of “fishing for, harvesting, or catching fish,” frequently or otherwise. These acts also fall short of “assist[ing] in using or operating” a boat or line to take fish without a license, despite the Department’s assertion to the contrary. (Fish & Game Code, § 7850, subd. (a).) No authority supports interpreting the prohibition on unlicensed “assist[ance]” to require an onshore tackle deliveryman or occasional family advisor to be licensed.

7. On the other hand, no evidence suggests petitioner is involved in volunteer work or community service, or that he has taken educational classes or received other training since he lost his license. He also provided almost no evidence from anyone else about his present good character or change in attitude. Only his son and wife testified on his behalf, and his son simply opined that petitioner had “learned his lesson.” (Factual Finding 7.) His wife said nothing at all about his character or attitude. He also provided no letters from character witnesses, or any other third party character evidence.

8. Petitioner acted dishonestly and with disregard for commercial fishing laws over an extended period of time. (See Factual Findings 1-2, 9.) Given the nature and severity of his past misconduct, more evidence from other persons about his rehabilitation is important, but was not part of his case for reinstatement. The mere passage of time and limited character evidence he presented are not enough to dispel all “substantial doubt” about his present good character and changed attitude. (*In re Angelia P.*, *supra*, 28 Cal.3d at p. 919.) Therefore, he did not prove he is rehabilitated by clear and convincing evidence. (*Ibid.*; *Hippard v. State Bar*, *supra*, 49 Cal.3d at pp. 1091-1092; *Housman v. Board of Medical Examiners*, *supra*, 84 Cal.App.2d at p. 315.) Accordingly, the order below is warranted.

ORDER

Jack Morici’s petition for reinstatement of his commercial fishing license is denied.

DATED: August 8, 2016

DocuSigned by:
Thomas Heller
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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of Commercial Privileges for:

JACK MORICI,

Petitioner.

Case No. 15ALJ01-FGC

OAH No. 2015080891

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Fish and Game Commission as its Decision in the above-entitled matter.

This Decision shall become effective _____.

IT IS SO ORDERED _____.

FISH AND GAME COMMISSION
STATE OF CALIFORNIA

By _____

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