

STAFF SUMMARY FOR DECEMBER 9-10, 2015

14. THOMAS PTAK ESTATE**Today's Item**Information Action

Approve request for an extension of time to transfer Mr. Thomas L. Ptak's transferable nearshore fishery permit and nearshore fishery trap endorsement for the Nearshore Fishery South Coast Regional Management Area to Dec 15, 2016.

Summary of Previous/Future Actions (N/A)

- Approved extension to transfer to Dec 15, 2015 Dec 3, 2014; Van Nuys
- **Today's request for an extension of time Dec 9-10, 2015; San Diego**

Background

Thomas L. Ptak died on March 13, 2012; at his death he owned five California commercial fishing permits. Attorneys for Mr. Ptak's estate indicate that they or the estate's representatives have been in communication with DFW's License and Revenue Branch (LRB) since less than a week after Mr. Ptak's death to understand the process by which Mr. Ptak's permits could be transferred.

On June 5, 2014, DFW approved the transfer of Mr. Ptak's transferable nearshore fishery permit and nearshore fishery trap endorsement for the south coast region; on Jun 22, 2014 DFW notified the estate and buyer of the permits that the transfer was rescinded because more than a year had passed since Mr. Ptak's death.

On Aug 22, 2014 attorneys for the estate appealed DFW's denial to FGC. After several conversations between FGC and DFW staff in Sep and Oct 2014, it was determined that a more efficient and mutually agreeable route would be for FGC to grant a time extension rather than incur the time and costs of an appeal hearing. Attorneys for the estate and Christine Allen as Executor of the Estate of Mr. Thomas L. Ptak therefore requested an extension of time to sell/transfer Mr. Ptak's transferable nearshore fishery permit and trap endorsement, which FGC granted on Dec 9, 2014; DFW did not object to the time extension.

Christine Allen as Executor of the Estate of Mr. Thomas L. Ptak contacted FGC staff in Nov 2015, indicating that DFW seized the subject permit and trap endorsement (and three other permits) which had prevented the estate from transferring either to a willing buyer. Attorneys for the estate and Christine Allen therefore requested another extension of time to sell/transfer Mr. Ptak's transferable nearshore fishery permit and trap endorsement (exhibits 1 and 2).

DFW has objected to the extension of time because it believes that FGC has no authority to grant the extension and because it accuses the estate of using the permits illegally after the death of Mr. Ptak; DFW has requested that FGC remove the agenda item (Exhibit 3). An attorney for the estate and Ms. Allen have responded to DFW's objection (Exhibit 4) by again requesting that FGC provide a one year extension of time to transfer the permits, direct DFW to allow the permits to be renewed, and to return all five permits to Christine Allen as executor of the estate.

STAFF SUMMARY FOR DECEMBER 9-10, 2015

At this time it is clear that the parties do not agree on a path forward; staff believes any possibility of resolution is best managed through an appeal hearing through the Office of Administrative Hearings (OAH).

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

FGC staff: Do not approve the request for an extension of time to transfer Mr. Thomas L. Ptak's permit and trap endorsement because it does not appear that FGC has that authority. The estate requested in Aug 2014, and has the right to, an appeal process, which staff recommends managing through OAH.

DFW: Do not approve the request for an extension of time to transfer Mr. Thomas L. Ptak's permit and trap endorsement, and remove the request as an agenda item, because FGC does not have the authority to waive the deadlines and because the estate has used the permits to illegally fish after Mr. Ptak's death.

Exhibits

1. [Letter from Chris Shrouds](#), attorney for the Estate of Thomas L. Ptak, requesting an extension of time to transfer Thomas L. Ptak's transferable south coast region nearshore fishery permit, received Nov 11, 2015
2. [Letter from Chris Shrouds](#), attorney for the Estate of Thomas L. Ptak, requesting an extension of time to transfer Thomas L. Ptak's transferable south coast region trap endorsement, received Nov 11, 2015
3. [DFW letter](#) objecting to the request for an extension, received Nov 23, 2015
4. [Letter from Chris Shrouds](#), attorney for the Estate of Thomas L. Ptak, responding to the DFW objection, received Nov 25, 2015

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves the request from the Estate of Mr. Thomas L. Ptak to appeal the Department's denial of an application to transfer a transferable nearshore fishery permit and a nearshore fishery trap endorsement for the Nearshore Fishery South Coast Regional Management Area, and directs staff to initiate an appeal process through the Office of Administrative Hearings.



GREENMAN, LACY, KLEIN,
HINDS, WEISER & HEFFRON
— ATTORNEYS AT LAW —

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JANET BLEDSOE LACY
MICHAEL L. KLEIN
KAREN M. HEFFRON **‡
KELLY L. HINDS*
KURT WEISER*

KENNETH L. GREENMAN, JR.*
OF COUNSEL

* PROFESSIONAL CORPORATION
** CERTIFIED SPECIALIST, FAMILY LAW,
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION
‡ FELLOW, AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS

900 PIER VIEW WAY
POST OFFICE BOX 299
OCEANSIDE, CA 92049-0299
(760) 722-1234 • FAX: (760) 722-5860

KATIE A. ANDERSON**
JEFFREY BLEDSOE LACY
KIMBERLY A. DAWSON
CHRISTOPHER SHOURDS
ANGELA JENKINS

LA JOLLA OFFICE
7825 FAY AVENUE
SUITE 200
LA JOLLA, CA 92037
(858) 459-9282

November 11, 2015

Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

**REQUEST FOR EXTENSION OF TIME TO TRANSFER THOMAS L. PTAK'S
TRANSFERRABLE SOUTH COAST REGION NEARSHORE FISHERY PERMIT**

Dear Fish and Game Commission:

At its meeting on December 3, 2014, in Van Nuys, the California Fish and Game Commission (the "Commission") approved a request for extension of time to transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Permit. The Commission extended the time in which this permit could be transferred to December 15, 2015. This is a formal request to the Commission for an additional one year extension of time to transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Permit.

I.

Background

Thomas L. Ptak died on March 13, 2012. Christine Allen, Mr. Ptak's partner of 16 years immediately retained the law firm Greenman, Lacy, Klein, Hinds, Weiser & Heffron (hereinafter "Attorneys") to assist her in administering Mr. Ptak's affairs. This included getting Christine Allen appointed as Executor of Mr. Ptak's probate estate and communicating with the Department of Fish and Wildlife regarding Mr. Ptak's commercial fishing permits. The probate estate of Mr. Ptak is still open today and Christine Allen remains the duly appointed Executor by order of the Superior Court of California, County of San Diego.

Attorneys began communication with the California Department of Fish and Wildlife upon Mr. Ptak's death regarding the procedure in which to transfer Mr. Ptak's commercial fishing permits, including the transferrable Nearshore South Coast Region Nearshore Fishery Permit that is the subject of this request for additional time to transfer.

Attorneys stayed in regular communication with Ms. Debbie Noriega at the Department of Fish and Wildlife from the time Mr. Ptak died and relied on the information and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's permits. On June 5, 2014, the probate estate of Mr. Ptak followed transfer instructions provided by Ms. Noriega and sold Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit. The Department of Fish and Wildlife approved the transfer and issued the permit in the name of the buyer.

On June 22, 2014, Christine Allen, the buyer of the permit, and Attorneys were notified that the successful transfer of Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit was rescinded. Attorneys immediately contacted Ms. Noriega who informed Attorneys that the transfer was rescinded because more than one year had passed since Mr. Ptak's death. Ms. Noriega stated she "felt horrible and was as surprised as we were."

Attorneys filed an Appeal of Denial of Application to Transfer Thomas L. Ptak's Transferrable South Coast Region Nearshore Fishery Permit with the Commission on August 22, 2014. The main grounds for the appeal was that Attorneys began communicating and working with Ms. Noriega within six (6) days of Mr. Ptak's death, were in regular communication with Ms. Noriega since March 13, 2012, and followed the advice and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit.

A copy of the Appeal for Denial of Application to Transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Permit, including all exhibits filed with said appeal is attached to this Request for Extension of time as **Exhibit "A"** and incorporated herein.

On December 19, 2014, Attorneys and Executor Christine Allen received a letter from the Commission approving an extension of time until December 15, 2015 to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement. A copy of this letter from the Commission is attached to this Request for Extension of time as **Exhibit "B"** and incorporated herein.

II.

Estate of Thomas L. Ptak Puts Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement Up For Sale

Christine Allen, in her capacity as Executor of the probate estate of Thomas L. Ptak, began marketing Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit

immediately after receiving the Commissions approval extending the time of transfer to December 15, 2015.

Christine Allen also continued to operate Mr. Ptak's commercial fishing business as an ongoing business concern of the Estate of Thomas L. Ptak as she had done since Mr. Ptak's death. The goal of continuing to operate the commercial fishing business was to attempt to generate sufficient income to pay of the creditor of the Estate of Thomas L. Ptak.

In order for Christine Allen to continue operating Mr. Ptak's commercial fishing business as an ongoing business concern of The Estate of Thomas L. Ptak, she continued to enlist the services of Eric Allen. Eric Allen is Mr. Ptak's long time crew member and an experienced commercial fisherman who has been involved in assisting the Estate of Thomas L. Ptak since Mr. Ptak died.

When Mr. Ptak died, the Superior Court of California, County of San Diego, appointed Eric Allen as the Special Administrator of the Estate of Thomas L. Ptak. Eric was appointed due to his familiarity of Mr. Ptak's commercial fishing business and due to his long history of working with Mr. Ptak. Eric Allen held the role of Special Administrator of the Estate of Thomas L. Ptak until the Court appointed Christine Allen Executor of the Estate of Thomas L. Ptak on September 18, 2012. At all times since, Christine Allen has enlisted the services of Eric Allen to operate Mr. Ptak's commercial fishing business as an ongoing business concern of the Estate of Thomas L. Ptak with the goal of generating sufficient income to pay off the creditors of the estate.

III.

Department of Fish and Wildlife Seizes Mr. Ptak's Commercial Fishing Permits

On March 18, 2015, Eric Allen was fishing on behalf of the probate Estate of Thomas L. Ptak aboard the vessel Donna Marie, a vessel that was an asset of probate estate. Mr. Allen was fishing using a General Gill/Trammel Net Permit that was current and issued in the name of Thomas L. Ptak. This permit is an asset of probate Estate of Thomas L. Ptak and has been listed and valued on an Inventory and Appraisal filed with the Superior Court of California, County of San Diego, on February 6, 2013.

It is important to know that on March 18, 2015, Eric Allen was not fishing with the transferrable South Coast Region Nearshore Fishery Permit or Transferrable South Coast Region Nearshore Fishery Trap Endorsement in which the Commission granted the extension of time to transfer until December 15, 2015.

While fishing on March 18, 2015, Eric Allen was boarded by the Department of Fish and Game. The Department of Fish and Game escorted Eric Allen and the vessel Donna Marie back to the vessel's slip in Oceanside Harbor and issued Eric a citation for the following: No Commercial Fishing License; Permittee (Thomas L. Ptak) required to be on vessel;

Department of Fish and Game Boat Registration Required; and Department of Fish and Game Boat Registration required aboard at all times.

Once at Oceanside Harbor Eric Allen went to his truck to obtain the following documents and permits, all of which were seized by the Department of Fish and Game: one transferrable South Coast Region Nearshore Fishery Permit issued in the name of Thomas Ptak; one transferrable South Coast Region Nearshore Trap Endorsement issued in the name of Thomas Ptak; one General Gill/Trammel Net Permit issued in the name of Thomas Ptak; one Lobster Operator Permit issued in the name of Thomas Ptak; one Southern Rock Crab Permit issued in the name of Thomas Ptak; the boat registration for the vessel Donna Marie; and one current Commercial Fishing License issued in the name of Thomas Ptak.

All permits seized were assets of the probate Estate of Thomas L. Ptak and were listed as such with the Superior Court of California, County of San Diego, and valued by a probate referee in an Inventory and Appraisal of assets owned by the probate Estate of Thomas L. Ptak filed with said Court on February 6, 2013.

Eric Allen being boarded by the Department of Fish and Game on March 18, 2015 resulted in two pending misdemeanor charges against Eric Allen. The first is for Fishing Without a Commercial License. The second is for Failure to Apply for Commercial Boat Registration.

The misdemeanor charges are not the subject of this request for extension of time. However, the events that have transpired are directly relevant to the reason the Estate of Thomas L. Ptak is requesting additional time to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Report.

Christine Allen, as the Executor of the Estate of Thomas L. Ptak has not been able to market or sell Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit since March 18, 2015 because the Department of Fish and Game seized the permits on March 18, 2015 and the Department of Fish and Wildlife will not return the permit to Christine Allen or the Estate of Thomas L. Ptak.

The result is that Christine Allen was granted a one year extension of time to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit but has been deprived of approximately nine (9) months of this one year extension because the permit has been held by the Department of Fish and Wildlife rather than being in the possession of Christine Allen.

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IV.

Estate of Thomas L. Ptak Attempts To Regain Permits From Department of Fish and Wildlife

Attorneys, on behalf of Christine Allen, Executor of the Estate of Thomas L. Ptak, contacted David Kiene at the California Department of Fish and Wildlife, Office of the General Counsel on April 3, 2015. Attorneys discussed with Mr. Kiene the seizure of Mr. Ptak's permits that are assets of the probate Estate of Thomas L. Ptak. In particular, Attorneys requested that Mr. Ptak's transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement be returned to the Estate of Thomas L. Ptak so these permits could be marketed and sold by December 15, 2015, the time in which the Commission granted their extension for transfer.

Mr. Kiene stated that he would look into the matter but that the permits may not be able to be returned to the Estate of Thomas L. Ptak because they have potential evidentiary value for the citations issued against Eric Allen. Attorneys explained that The Estate of Thomas L. Ptak was no longer fishing, would not fish the permits if returned, and that the vessel Donna Marie (the fishing boat owned by the Estate of Thomas L. Ptak) was parked and listed for sale. Attorneys again requested return of Mr. Ptak's transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement so these permits could be sold before the extension of time granted by the Commission expired. Attorneys explained to Mr. Kiene that they did not understand how the transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement had evidentiary value that was any different or more substantive than a copy of the permits would have.

Mr. Kiene informed Attorneys he would discuss the issue with his enforcement division and get back to Attorneys regarding Attorneys request for the return of the transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement. Mr. Kiene never responded to Attorneys or to Christine Allen via telephone, letter, email, or any other form of communication.

Attorneys followed up with Mr. Kiene via telephone but never received a call back. To date, Attorneys and Christine Allen have received no communication, written or otherwise, from the Department of Fish and Wildlife since April 3, 2015.

V.

Why The Estate of Thomas L. Ptak Needs Additional Time to Transfer Permit

The probate Estate of Thomas L. Ptak has not been afforded sufficient opportunity to transfer the transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement because these permits have been held by the Department of Fish and Wildlife since March 18, 2015.

VI.

Additional Pertinent Information

The Estate of Thomas L. Ptak sold the vessel Donna Marie and is no longer fishing. The Estate of Thomas L. Ptak has not fished since March 18, 2015 and has no plans to fish. The Estate of Thomas L. Ptak sold the vast majority of the commercial fishing equipment owned by the Estate of Thomas L. Ptak. Any remaining fishing equipment owned by the Estate of Thomas L. Ptak is for sale. The probate of the Estate of Thomas L. Ptak is still an open case with the Superior Court of California, County of San Diego. Christine Allen is still the duly appointed Executor of the Estate of Thomas L. Ptak.

In addition to Mr. Ptak's transferrable South Couth Coast Region Nearshore Fishery Permit and Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement, The California Department of Fish and Wildlife is holding the following permits that are assets of the Estate of Thomas L. Ptak: one General Gill/Trammel Net Permit; one Lobster Operator Permit; and one Southern Rock Crab Permit (collectively referred to hereafter as "The Five Permits"). All of The Five Permits were seized by the Department of Fish and Wildlife on March 18, 2015 and have not been returned to the Estate of Thomas L. Ptak, thus depriving the Estate of Thomas L. Ptak the ability to transfer these permits by following the advice and instruction Ms. Noriega provided Attorneys and the Estate of Thomas L. Ptak beginning six (6) days following the death of Mr. Ptak.

VII.

Request for Additional Extension of time

Based on the information addressed in this Request For Extension of Time To Transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Permit, the Estate of Thomas L. Ptak respectfully requests from the Commission an additional one (1) year extension of time to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit.

VIII.

Request for Right to Renew Permits

The Estate of Thomas L. Ptak requests the Commission issue an instruction to the Department of Fish and Wildlife to allow the Estate of Thomas L. Ptak to renew The Five Permits so The Five Permits will not expire and so the Estate of Thomas L. Ptak has the opportunity to transfer the permits by following the advice and instruction Ms. Noriega provided Attorneys and the Estate of Thomas L. Ptak beginning six (6) days following the death of Mr. Ptak.

IX.

Request for Return of Permits

The Estate of Thomas L. Ptak requests the Commission issue an instruction to the Department of Fish and Wildlife to return The Five Permits to the Estate of Thomas L. Ptak. Return of these permits is necessary because the Estate of Thomas L. Ptak cannot transfer the permits by following the advice and instruction Ms. Noriega provided Attorneys and the Estate of Thomas L. Ptak beginning six (6) days following the death of Mr. Ptak unless the Estate of Thomas L. Ptak is in possession of these permits. The instruction should direct The Five Permits be returned to Christine Allen, Executor, The Estate of Thomas L. Ptak,

X.

Final Comments

Thank you for your time and consideration in reviewing the Estate of Thomas L. Ptak's requests contained in this document.

Very Truly Yours,

GREENMAN, LACY, KLEIN,
HINDS, WEISER & HEFFRON,
Attorneys for Christine Allen, Executor



CHRIS SHOURDS, ESQ.

ESTATE OF THOMAS L. PTAK



CHRISTINE ALLEN, Executor of the
Estate of Thomas L. Ptak

Exhibit A

GREENMAN, LACY, KLEIN, O'HARRA & HEFFRON

KENNETH L. GREENMAN, JR.*
JANET BLEDSOE LACY
MICHAEL L. KLEIN
KAREN M. HEFFRON ** †
KELLY L. HINDS
KURT WEISER

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

900 PIER VIEW WAY
POST OFFICE BOX 299
OCEANSIDE, CA 92049-0299
(760) 722-1234 FAX: (760) 722-5860

ARTHUR E. GORE
1919-2002
RUSSELL W. GROSSE
COLLEEN C. O'HARRA
RETIRED
KENNETH L. GREENMAN, JR.
OF COUNSEL

KATIE A. ANDERSON **
JEFFREY BLEDSOE LACY
JENNIFER BLEDSOE LACY
KIMBERLY A. DAWSON
MARIANNE LALEUF-THOM
CHRISTOPHER SHOURDS

* A Professional Corporation
** Certified Specialist, Family Law,
The State Bar of California Board
of Legal Specialization
† Fellow, American Academy of
Matrimonial Lawyers

LA JOLLA OFFICE
7825 FAY AVENUE
SUITE 200
LA JOLLA, CA 92037-4252
(858) 459-9282

August 22, 2014

Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

APPEAL OF DENIAL OF APPLICATION TO TRANSFER THOMAS L. PTAK'S TRANSFERABLE SOUTH COAST REGION NEARSHORE FISHERY PERMIT

Dear Fish and Game Commission:

This appeal is in response to the July 3, 2014 Notice of Denial of Application to Transfer Thomas L. Ptak's Transferable South Coast Region Nearshore Fishery Permit addressed to Christine Allen as Executor of the Estate of Thomas L. Ptak. A copy of this Notice of Denial is attached to and incorporated herein as Exhibit A.

I.

Reason Given for Denial

The application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit was denied because the application was submitted more than one year after Mr. Ptak's date of Death.

II.

Basis for Appeal

Thomas Leonard Ptak died on March 13, 2012. A copy of his death certificate is attached to and incorporated herein as Exhibit B.

Christine Allen, Mr. Ptak's partner of 16 years, immediately retained the law firm Greenman, Lacy, Klein, O'Harra & Heffron (hereinafter "Attorneys") to assist her in administering Mr. Ptak's affairs. This included communicating with the California Department of Fish and Wildlife regarding Mr. Ptak's commercial fishing permits and handling the Probate of Mr. Ptak's Estate.

Attorneys enlisted the assistance of commercial fisherman Ken Bates due to his understanding of the unique nature of the commercial fishing permits owned by Mr. Ptak. On behalf of Attorneys, Ken Bates first contacted Debbie Noriega at the Department of Fish and Wildlife on March 19, 2012 only six (6) days following Mr. Ptak's death. Ken Bates notified Ms. Noriega that Mr. Ptak died, confirmed that Mr. Ptak owned five commercial fishing permits, obtained information on how Mr. Ptak's permits could be transferred, and obtained instruction on how Mr. Ptak's personal representative Christine Allen could apply for the transfer of Mr. Ptak's commercial fishing permits. Ms. Noriega provided invaluable assistance and shared extensive knowledge regarding the permits owned by Mr. Ptak. However, at no time did Ms. Noriega explain to Mr. Bates that there was a time frame in which Mr. Ptak's permits must be transferred.

Attorney Kurt Weiser of the law firm Greenman, Lacy, Klein, O'Harra & Heffron spoke directly to Ms. Noriega two times within one year of Mr. Ptak's death. Attorney Weiser's first conversation with Ms. Noriega took place on or about May 16, 2012. His second conversation with Debbie Noriega took place on or about August 22, 2012. The purpose of these conversations was to discuss the procedure for transferring Mr. Ptak's commercial fishing permits.

Attorney Weiser explained that Mr. Ptak's estate was subject to Probate with the Superior Court of California, County of San Diego and therefore Mr. Ptak's commercial fishing permits would become probate assets. Under the California Probate Code assets, including the permits, can not transfer prior to the time the Probate Court's order to distribute estate assets is issued.

Attorney Weiser informed Ms. Noriega that the Probate of Mr. Ptak's estate would be a lengthy process because no probate can be completed until creditors of the estate are paid. Ms. Noriega informed Attorney Weiser that Mr. Ptak's commercial fishing permits could be retained in Mr. Ptak's probate estate and could be transferred once the probate was complete. Attorneys were appreciative of Ms. Noriega's analysis. However, Ms. Noriega analysis of the transfer of Mr. Ptak's permits never included reference to time frames in which applications to transfer Mr. Ptak's permits must be submitted to the Department of Fish and Wildlife. All of Mr. Ptak's commercial fishing permits are still assets of Mr. Ptak's Probate Estate as of the date of this appeal.

Attorney Weiser and Christine Allen relied on Ms. Noriega's instruction and expertise as a Department of Fish and Wildlife analyst. Attorney Weiser relied on Ms. Noriega's thorough analysis and advice (and lack of any mention of a time limitation). On that basis Attorney Weiser understood that the time frames in which Mr. Ptak's permits could be transferred would be tolled during the probate. A declaration by Attorney Weiser is attached to and incorporated herein as Exhibit C.

III.

Summary of the Probate of The Estate of Thomas Ptak

Attorneys, on behalf of Petitioner Christine Allen, promptly filed a Petition for Probate of Mr. Ptak's Last Will and Testament and for Letters Testamentary with the Superior Court of California, County of San Diego, on June 1, 2012.

The Superior Court issued an order appointing Christine Allen as the Executor of Mr. Ptak's Will and issued Letters Testamentary to Christine Allen as the Executor of the Will of Mr. Ptak with full authority to administer Mr. Ptak's Probate Estate on September 18, 2012.

Multiple creditors filed creditor's claims against Mr. Ptak's Probate Estate. Claims by creditors of the decedent are very common in probates and occur when the decedent dies with legitimate debt. Attorneys and Christine Allen have worked diligently with these creditors to plan for the payoff of Mr. Ptak's debt so that Mr. Ptak's Probate Estate can generate enough income to pay off these creditors. Attorneys also maintained frequent communication with Ms. Noriega from Mr. Ptak's date of death until present day. These communications include Attorneys providing Ms. Noriega with frequent status updates on the probate of Mr. Ptak's estate. Ms. Noriega continued to provide Attorneys with advice and guidance.

Ms. Noriega advice to hold Mr. Ptak's permits in Mr. Ptak's Probate Estate until the close of probate never wavered. As recently as April 28, 2014, Ms. Noriega advised attorney Weiser that Mr. Ptak's commercial permits could be transferred once the probate of Mr. Ptak's estate is completed. Specifically, Ms. Noriega confirmed with attorney Weiser and attorney Christopher Shourds of Greenman, Lacy, Klein, O'Harra & Heffron that the best way to transfer Mr. Ptak's commercial permits was to continue to hold the permits in Mr. Ptak's probate estate until the probate is complete. Ms. Noriega stated that Attorneys should wait until they receive a court order for distribution of Mr. Ptak's probate assets issued by a Judge of the Superior Court and then submit the court order along with an application to transfer Mr. Ptak's permits to Eric Allen to the Department of Fish and Wildlife.

Further, Ms. Noriega stated that she had communicated with her supervisor and advised Attorneys that this process would result in the successful transfer of Mr. Ptak's permits to Eric Allen. A declaration by attorney Shourds is attached to and incorporated herein as Exhibit D.

IV.

Attorneys Sought Additional Ways to Transfer Permits to Eric Allen Prior to the Close of Mr. Ptak's Probate Estate

Attorney Weiser informed Ms. Noriega that Christine Allen desired to transfer Mr. Ptak's

Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Eric Allen, Mr. Ptak's long time deckhand and crew member, without the requirement that Eric Allen need to purchase any ancillary permits or endorsements. Ms. Noriega informed Attorney Weiser that this could not be accomplished because Eric Allen was not a blood relative of Mr. Ptak and because the owner of the permits was not a commercial entity in which Eric Allen possessed an ownership interest. Again, Ms. Noriega was cooperative and knowledgeable. Attorneys appreciate the assistance and insight she provided.

On October 7, 2013 attorney Weiser submitted a letter to Ms. Noriega asking the Department of Fish and Wildlife to consider allowing the transfer of Mr. Ptak's permits to Eric Allen, without the need for Eric Allen to acquire any ancillary permits, under the theory that Mr. Ptak and Eric Allen operated the fishing business as a general partnership entity. A general partnership can be legally recognized as a commercial entity in the state of California.

Attorney Weiser's letter informed Ms. Noriega that Eric Allen was paid a "crew share" for the past twelve years. It also explained that Mr. Ptak and Eric Allen split profits, each contributed to expenses, shared equally in the responsibility of maintaining the boat and the rest of the fishing operation, and had the ability to bind each other to contracts and other liabilities. Under these circumstances, attorney Weiser urged the Department of Fish and Wildlife that Mr. Ptak's Probate Estate should be able to transfer the permits to Eric Allen prior to the close of probate without the requirement that Eric Allen purchase any ancillary permits.

Attorneys never received a definitive response to attorney Weiser's October 7th letter despite placing numerous follow up calls to Ms. Noriega between December 16, 2013 and December 30, 2013. Ms. Noriega was supportive in trying to obtain a written response from her supervisors to attorney Weiser's letter. On December 30, 2013, attorney Shourds reached Ms. Noriega via telephone. Ms. Noriega still did not have a response to attorney Weiser's letter. However, Ms. Noriega stated that one or more of Mr. Ptak's permits could be sold prior to the close of probate if the Department of Fish and Wildlife did not approve the transfer of Mr. Ptak's permits to Eric Allen based on the theory that Mr. Ptak and Eric Allen were operating as a general partnership.

Attorneys relayed Ms. Noriega's comments to Christine Allen. Upon hearing Ms. Noriega's statement that one or more of Mr. Ptak's permits could be sold out of Mr. Ptak's Probate Estate, Christine Allen decided that the quickest way to generate income necessary to pay off creditors and close Mr. Ptak's Probate Estate would be to sell one or more of Mr. Ptak's permits.

Four months passed and Attorneys still did not receive a definitive response to their request to transfer Mr. Ptak's permits to Eric Allen based on the theory that Mr. Ptak and Eric Allen were operating as a general partnership. Attorney Weiser left a voicemail for Ms. Noriega on April 7, 2014 expressing Christine Allen's desire to sell Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. Attorneys never received a response to this voicemail.

V.

Department of Fish and Wildlife's Approval of Transfer

On or about April 16, 2014 Christine Allen began working with a broker to sell Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. Christine Allen was introduced to buyer Brian Kiyohara on or about April 21, 2014. On or about April 28, 2014, Attorneys Weiser and Shourds spoke to Ms. Noriega to inform her that Christine Allen was selling Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement.

Attorney Weiser informed Ms. Noriega that the sale of these permits would generate enough income to pay off the creditors of Mr. Ptak's Probate Estate so that the probate could be closed. Again, Ms. Noriega stated that any unsold permits could be held in Mr. Ptak's Probate Estate and transferred to Eric Allen at the close of probate by submitting a court order for distribution issued by a Judge of the Superior Court along with applications to transfer Mr. Ptak's remaining permits to Eric Allen to the Department of Fish and Wildlife.

Christine Allen relied on the information provided by Debbie Noriega and sold Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara.

The Department of Fish and Wildlife approved the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara on June 5, 2014 and re-issued the permits in the name of Brian Kiyohara. Copies of the Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement issued to Brian Kiyohara are attached to and incorporated herein as Exhibit E.

The sale of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement generated enough proceeds that Christine Allen was less than one week away from issuing payment in full to all creditors of Mr. Ptak's Probate Estate. Issuing these payments to creditors would have allowed Christine Allen to close Mr. Ptak's Probate Estate.

VI.

Department of Fish and Wildlife's Rescission of Transfer

On June 12, 2014, Christine Allen, Brian Kiyohara, and Attorneys were notified that the successful transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement was rescinded by the Department of Fish and Wildlife even though transferee Brian Kiyohara

was already in possession of newly issued permits.

Attorney Weiser immediately contacted Ms. Noriega who informed him that the transfer of the permits was rescinded because more than one year had passed since Mr. Ptak's death. Ms. Norriega stated that she "felt terrible and was surprised as we were."

Christine Allen had already deposited the proceeds from the sale of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement into the bank account for Mr. Ptak's Probate Estate and wrote checks to pay off the creditors of Mr. Ptak's Probate Estate. Fortunately, the checks to the creditors were not yet mailed and were able to be voided.

Christine Allen refunded transferee Brian Kiyohara the full amount that Mr. Kiyohara paid for Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement.

VII.

Additional Pertinent Information

The Probate of the Estate of Mr. Ptak is still ongoing as of the date of this Appeal of Denial of Application to Transfer Thomas L. Ptak's Transferable South Coast Region Nearshore Fishery Permit.

Attorneys began communicating and working with Ms. Noriega within six (6) days of Mr. Ptak's death. Attorneys and Christine Allen have not delayed or neglected to attempt to transfer Mr. Ptak's commercial fishing permits. Attorneys have been in regular communication with Ms. Noriega since March 19, 2012 and have followed the advice and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's permits.

The Estate of Mr. Ptak owns one Transferrable South Coast Region Nearshore Fishery Permit, one Transferrable South Coast Region Nearshore Fishery Trap Endorsement, one General Gill/Trammel Net Permit, one Lobster Operator Permit, and one Southern Rock Crab Trap Permit. All of these permits have exceeded the time frame for approval of transfer due to the probate of Mr. Ptak's estate and the same facts contained in this appeal.

Attorneys are hopeful the Fish and Game Commission will approve the request for extension of time (below) and apply it to all permits owned by the Estate of Mr. Ptak. Attorneys are prepared to apply for transfer of each permit owned by the Estate of Mr. Ptak and to appeal any denial to the maximum extent possible.

Attorneys are hopeful this situation can be resolved and the extension of time requested below can be granted without the need to appear at a hearing in front of the Fish and Game Commission.

Attorneys sincerely appreciate the time and resources the Fish and Game Commission put

into reading and investigating this Appeal of Denial of Application to Transfer Thomas L. Ptak's Transferable South Coast Region Nearshore Fishery Permit.

VIII.

Request for Relief

Attorneys and Christine Allen, Executor of the Estate of Thomas L. Ptak, hereby request an extension of time to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit. Specifically, Attorneys and Christine Allen, Executor of the Estate of Thomas L. Ptak, formally request from the Fish and Game Commission a nine (9) month extension to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit with the extension beginning on the date that Attorneys and Christine Allen are notified by the Fish and Game Commission that the extension of time has been granted.

Christine Allen plans to use this extension of time to sell Mr. Ptak's Transferable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. This sale will generate enough proceeds that creditors of Mr. Ptak's Probate Estate can be paid off and Attorneys' can file a petition with the Superior Court to close the probate and distribute Mr. Ptak's remaining assets.

Christine Allen, at the time probate can be closed, plans to transfer all of Mr. Ptak's remaining permits to Eric Allen so the fishing business can be maintained. The inability to transfer Mr. Ptak's permits by selling one or more permit and transferring the remaining permits at the close of probate will irreparably harm Christine Allen and Eric Allen. Christine and Eric's main source of income comes from the operation of the fishing business Mr. Ptak spent his life developing with the help of Eric Allen as his crew member and deckhand. If the Fish and Game Commission does not grant an extension of time to allow Christine Allen to transfer Mr. Ptak's permits then the Allen family will likely lose everything, including but not limited to the house they live in and the income source they live off of. The extension of time requested above is the best foreseeable way to save the Allen family from financial hardship that would occur if Mr. Ptak's permits become non-transferrable due to the passage of time following Mr. Ptak's Death.

Respectfully Submitted,

GREENMAN, LACY, KLEIN,
O'HARRA & HEFFRON



CHRIS SHOURDS, ESQ.

8/25/14
Date



KURT WEISER, ESQ.

8/25/14
Date

ESTATE OF THOMAS L. PTAK



CHRISTINE ALLEN, Executor of the
Estate of Thomas L. Ptak

8/25/14

Date

Enclosures:

- Exhibit A - Notice of Denial of Application to Transfer Thomas L. Ptak's
Transferrable South Coast Region Nearshore Fishery Permit.
- Exhibit B - Death Certificate for Thomas L. Ptak
- Exhibit C - Declaration by Attorney Kurt Weiser
- Exhibit D - Declaration by Attorney Christopher Shourds
- Exhibit E - Copy of Transferrable South Coast Region Nearshore Fishery Report
and Transferrable South Coast Region Nearshore Fishery Trap
Endorsement Issued to Transferee Brian Kiyohara

Exhibit A



Certified Mail

July 3, 2014

Ms. Christine Allen

**SUBJECT: NOTICE OF DENIAL OF AN APPLICATION TO TRANSFER
TRANSFERABLE SOUTH COAST REGION NEARSHORE FISHERY
PERMIT**

Dear Ms. Allen:

This letter is in response to your application to transfer a 2014-2015 Transferable South Coast Region Nearshore Fishery Permit (TSCRNFP), Permit Number NST033, from Mr. Thomas L. Ptak (L30798) to Mr. Brian Kiyohyara (L74934). You are the executor of Mr. Ptak's estate.

Authority-Nearshore Fishery Permit

Pursuant to Section 150(g)(1)(A), Title 14, of the California Code of Regulations (CCR), a transferable Nearshore Fishery Permit (NFP) may be transferred from one person to another. If the number of NFPs in a regional management area is greater than the capacity goal for the regional management area, one additional transferable NFP for the same regional management area must be surrendered to the Department of Fish and Wildlife (Department) for cancellation at the same time the application for transfer is submitted. The capacity goal for the South Coast Region is 18 permits. As of June 5, 2014, 43 SCRNFPS have been issued, therefore two TSCRNFPS must be surrendered.

Pursuant to Section 150(g)(3), Title 14, of the CCR, a transferable NFP may be transferred to the estate of a permittee who has died only for the purpose of transferring the NFP to another person.

Nearshore Fishery Permit Transfer Requirements

- The NFP(s) must be valid at the time of application for transfer.
- The transferee must have a valid California Commercial Fishing License.
- The transferee must have never been convicted of a violation of any provision of these regulations or the Fish and Game Code (FGC) pertaining to the commercial take of nearshore fish stocks.

Required Documentation

- The request for the transfer must be submitted within one year of the date of death of the permit holder as listed on the death certificate.
- Transfer application in the form of a notarized letter which identifies the deceased permit holder, transferee, and transferable NFP for the regional management area.
- Copy of the permittee's death certificate.
- Copy of the permittee's California Commercial Fishing License and original NFP(s).
- Copy of the transferee's California Commercial Fishing License.
- Nonrefundable NFP transfer fee of \$500.

Documentation Submitted

- A notarized letter dated May 9, 2014, received May 23, 2014, from Ms. Christine Allen, Executor of the Estate of Thomas L. Ptak requesting to transfer Mr. Ptak's TSCRNFP and Transferable South Coast Region Nearshore Fishery Trap Endorsement (TSCRNFTE) to Mr. Kiyohara.
- A notarized letter dated May 9, 2014, received May 23, 2014, from Eric A. Kramer, requesting to transfer his TSCRNFP to Mr. Kiyohara.
- A notarized letter dated May 9, 2014, received May 23, 2014, from Brian Kiyohara, stating that one the TSCRNFPs will be retired to complete the transfer process.
- Copy of the Certificate of Death from County of San Diego, stating Mr. Ptak's date of death was on March 13, 2012.
- Copy of Letter of Testamentary filed January 31, 2014, for the estate of Thomas L. Ptak, appointing Christine Allen as executor.
- Mr. Ptak's original 2014-2015 TSCRNFP.
- Mr. Kramer's original 2014-2015 TSCRNFP.
- A copy of Mr. Kiyohara's 2014-2015 California Commercial Fishing License and Commercial General Trap Permit.
- Nonrefundable transfer fee \$500.

Department of Fish and Wildlife's Recommendation

The Department is denying your application to transfer Mr. Ptak's TSCRNFP, because the application must be submitted within one year of the date of death of the permit holder as listed on the death certificate. The application was received more than 26 months after the date of death listed on the death certificate.

Deadline to File an Appeal

You may appeal to the Department in writing describing the basis for the appeal. The appeal shall be reviewed and decided by the Department. The decision of the Department may be appealed in writing to the Commission at 1416 Ninth Street,

Ms. Christine Allen

July 3, 2014

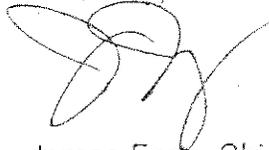
Page Three

Sacramento, California 95814. Pursuant to Section 150(m)(3), Title 14, of the CCR, your appeal of the Department's decision must be received within 60 days of this letter.

Your application to transfer a Transferable South Coast Region Nearshore Fishery Trap endorsement was addressed under separate cover.

If you have any questions or require further assistance, please contact Ms. Debbie Noriega of my staff, at the letterhead address, by telephone at (916) 928-5817, or e-mail Debbie.Noriega@wildlife.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Fong', with a stylized flourish at the end.

James Fong, Chief
License and Revenue Branch

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

Ms. Debbie Noriega
Department of Fish and Wildlife
Sacramento, California

Exhibit B

CERTIFICATION OF VITAL RECORD

COUNTY OF SAN DIEGO

3052012050234

CERTIFICATE OF DEATH

3201267004299

1. NAME OF DECEDENT, FIRST LAST THOMAS		2. MIDDLE LEONARD		3. LAST NAME PTAK	
4. PLACE OF BIRTH (State and County) CALIFORNIA		5. DATE OF BIRTH (mm/dd/yyyy) 0625		6. SEX M	
7. HIGHEST GRADE OF SCHOOL HS GRADUATE		8. OCCUPATION (Include all) COMMERCIAL FISHERMAN		9. TYPE OF BUSINESS OR SERVICE (Include all) COMMERCIAL FISHING	
10. USUAL RESIDENCE (City) FALLBROOK		11. COUNTY RESIDENCE SAN DIEGO		12. ZIP CODE 92028	
13. MARITAL STATUS (Include all) DIVORCED		14. OCCUPATION (Include all) COMMERCIAL FISHING		15. YEARS IN OCCUPATION 30	
16. INFORMANT'S NAME RELATIONSHIP CHRISTINE ALLEN, COMPANION		17. SIGNATURE OF REGISTRAR WILMA WOOTEN, MD		18. DATE 03/19/2012	
19. PLACE OF DEATH HOME		20. COUNTY SAN DIEGO		21. ZIP CODE 92028	
22. CAUSE OF DEATH NONE		23. MANNER OF DEATH NONE		24. PLACE OF BURIAL NONE	
25. SIGNATURE OF CORONER, CAPTIVE EXAMINER OTHON J MENA MD		26. DATE 03/16/2012		27. TYPE, NAME, TITLE OF PROVIDER IDENTIFY EXAMINER OTHON J MENA MD, DEP MED EXAMINER	

A002401545

County of San Diego - Department of Health Services - 3851 Rosecrans Street. This is to certify that, if bearing the OFFICIAL SEAL OF THE STATE OF CALIFORNIA, the OFFICIAL SEAL OF SAN DIEGO COUNTY AND THEIR DEPARTMENT OF HEALTH SERVICES EMBOSSED SEAL, this is a true copy of the ORIGINAL DOCUMENT FILED. Required fee paid.

Wilma J. Wooten, M.D.
 WILMA J. WOOTEN, MD
 REGISTRAR OF VITAL RECORDS
 County of San Diego

DATE ISSUED: March 22, 2012

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



Exhibit C

KURT WEISER, ESQ.
GREENMAN, LACY, KLEIN,
O'HARRA & HEFFRON
900 Pier View Way, P.O. Box 299
Oceanside, California 92049-0299
(760)722-1234

Attorneys for Christine Allen,
Executor of the Estate of Thomas L. Ptak,

CALIFORNIA FISH AND GAME COMMISSION

IN THE MATTER OF:	)	"EXHIBIT C"
)	
APPEAL OF DENIAL OF	)	DECLARATION OF KURT WEISER IN
APPLICATION TO TRANSFER	)	SUPPORT OF APPEAL OF DENIAL OF
THOMAS L. PTAK'S	)	APPLICATION TO TRANSFER THOMAS
TRANSFERRABLE SOUTH	)	L. PTAK'S TRANSFERRABLE SOUTH
COAST REGION NEARSHORE	)	COAST REGION NEARSHORE FISHERY
FISHERY PERMIT	)	PERMIT
)	
)	
)	

I, KURT WEISER, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a partner in the law firm of Greenman, Lacy, Klein, O'Harra & Heffron (hereinafter "Attorneys"), the attorneys-of-record for Christine Allen, Executor of the Estate of Thomas L. Ptak. I have personal knowledge to the following facts, except to those matters which I so indicate that are based on information and belief.

2. Thomas Leonard Ptak died on March 13, 2012. I was retained by Christine Allen immediately following Mr. Ptak's death. Christine Allen informed me that Mr. Ptak owned five (5) commercial fishing permits issued by the California Department of Fish and Wildlife.

3. I enlisted the assistance of commercial fisherman Ken Bates to contact the California Department of Fish and Wildlife on my behalf to notify the Department that Mr. Ptak died, confirm that Mr. Ptak owned five commercial fishing permits, obtain information on how Mr. Ptak's permits could be transferred, and obtain instructions on how Mr. Ptak's personal representative Christine Allen could apply for the transfer of Mr. Ptak's permits.

4. Ken Bates contacted Debbie Noriega at the California Department of Fish and Wildlife on March 19, 2012, only six (6) days following Mr. Ptak's death. Mr. Bates notified Ms. Noriega of Mr. Ptak's death and obtained information regarding the transferability of Mr. Ptak's permits. I spoke with Mr. Bates following his conversation with Ms. Noriega and Mr. Bates provided me with the notes he took during his conversation with Ms. Noriega. Based on my information and belief, Ms. Noriega never informed Mr. Bates that there was a time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit must be submitted to the California Department of Fish and Wildlife.

5. I personally spoke to Ms. Noriega two times within one year of Mr. Ptak's death to discuss the procedure for transferring Mr. Ptak's permits. I informed Ms. Noriega that Mr. Ptak's estate was subject to probate with the Superior Court of California, County of San Diego and that Mr. Ptak's commercial fishing permits were subject to the estate and like any estate assets could not be transferred to Eric Allen without closing the probate.

6. I explained to Ms. Noriega that Mr. Ptak's Probate Estate can not be closed until the creditors of the probate estate are paid. Ms. Noriega informed me that Mr. Ptak's commercial fishing permits could be retained in Mr. Ptak's Probate Estate and could be transferred once the probate was complete. I relied on this information provided by Ms.

Noriega. Ms. Noriega never informed me that there was a time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit must be submitted to the California Department of Fish and Wildlife.

7. As recently as April 28, 2014, Ms. Noriega informed me that an acceptable way to transfer Mr. Ptak's permits was to continue to hold the permits in Mr. Ptak's Probate Estate until the probate estate is complete. Ms. Noriega stated that I should wait to receive a court order for distribution of Mr. Ptak's probate assets issued by a Judge of the Superior Court and then submit the court order along with an application to transfer Mr. Ptak's permits to the California Department of Fish and Wildlife.

8. On or about April 28, 2014, Ms. Noriega informed me that one or more of Mr. Ptak's permits could be sold out of Mr. Ptak's Probate Estate in order to generate enough proceeds to pay off the estate's creditors so that the probate could be closed. In reliance on this information, I assisted Christine Allen, Executor of the Estate of Thomas Ptak in selling Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit to Brian Kiyohara. The California Department of Fish and Wildlife approved the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit to Brian Kiyohara and issued the permit in the name of Brian Kiyohara. The California Department of Fish and Wildlife then rescinded the transfer because the application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit was submitted more than one year after Mr. Ptak's death.

9. I spoke to Ms. Noriega on June 6, 2014 when I learned that the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit to Brian Kiyohara had been rescinded. Ms. Noriega stated that she felt terrible and was taken by surprise.

10. The probate of the Estate of Thomas L. Ptak is still ongoing as of the date of this declaration.

11. I have been in regular communication with Ms. Noriega, with initial assistance from Mr. Bates, since the date of Mr. Ptak's death. I followed the advice and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit. It was my belief based on my conversations with Ms. Noriega that the time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit must be submitted to the California Department of Fish and Wildlife was tolled while Mr. Ptak's Estate was being probated.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: August 25, 2014

GREENMAN, LACY, KLEIN
O'HARRA, & HEFFRON

BY:



KURT WEISER

Exhibit D

CHRISTOPHER SHOURDS, ESQ.
GREENMAN, LACY, KLEIN,
O'HARRA & HEFFRON
900 Pier View Way, P.O. Box 299
Oceanside, California 92049-0299
(760)722-1234

Attorneys for Christine Allen,
Executor of the Estate of Thomas L. Ptak,

CALIFORNIA FISH AND GAME COMMISSION

IN THE MATTER OF:	)	"EXHIBIT D"
)	
APPEAL OF DENIAL OF	)	DECLARATION OF CHRISTOPHER
APPLICATION TO TRANSFER	)	SHOURDS IN SUPPORT OF APPEAL OF
THOMAS L. PTAK'S	)	DENIAL OF APPLICATION TO
TRANSFERRABLE SOUTH	)	TRANSFER THOMAS L. PTAK'S
COAST REGION NEARSHORE	)	TRANSFERRABLE SOUTH COAST
FISHERY PERMIT	)	REGION NEARSHORE FISHERY
	)	PERMIT
)	
)	

I, CHRISTOPHER SHOURDS, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a associate attorney in the law firm of Greenman, Lacy, Klein, O'Harra & Heffron (hereinafter "Attorneys"), the attorneys-of-record for Christine Allen, Executor of the Estate of Thomas L. Ptak. I have personal knowledge to the following facts, except to those matters which I so indicate that are based on information and belief.

2. My first communication with Debbie Noriega at the California Department of Fish and Wildlife was on December 16, 2013. I contacted Ms. Norriega to follow up to a letter attorney Weiser sent Ms. Noriega on October 7, 2013. Mr. Weiser's letter inquired as to whether Mr. Ptak's commercial fishing permits could be transferred to Eric Allen under

the theory that Mr. Ptak operated his commercial fishing operation as a general partnership entity. Under California law a general partnership is formed whenever two or more people join in a business for profit and share responsibility for management, profits, and liabilities for the debts of the general partners. Mr. Ptak shared profits with Mr. Allen by paying Mr. Allen a "crew share" that was a percentage of their net income. In addition to Mr. Ptak and Mr. Allen splitting profits, they each contributed to expenses, shared equally in the responsibility of maintaining the boat and the rest of the fishing operating, and had the ability to bind each other to contracts and other liabilities.

3. Ms. Noriega was cooperative in telling me she would attempt to have her supervisor prepare a written response to attorney Weiser's letter. No written response or definitive oral response to attorney Weiser's letter was ever received.

4. On December 30, 2014, Ms. Noriega informed me via telephone that one or more of Mr. Ptak's permits could be sold prior to the close of probate if the Department of Fish and Wildlife did not approve the transfer of Mr. Ptak's permits to Mr. Allen based on the theory that Mr. Ptak and Mr. Allen were operating as a general partnership.

5. In April of 2014 I began working to assist Christine Allen in the sale of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement.

6. On or about April 28, 2014, I participated in a telephone call with Ms. Noriega and attorney Weiser. Attorney Weiser informed Ms. Noriega that Christine Allen was selling Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. Attorney Weiser also informed Ms. Noriega that the sale of these permits would generate enough income to pay off the

creditors of Mr. Ptak's Probate Estate so that the probate could be closed. Ms. Noriega stated that any unsold permits could remain in Mr. Ptak's Probate Estate and be transferred to Eric Allen at the close of probate by submitting a court order for distribution issued by a Judge of the Superior Court along with applications to transfer Mr. Ptak's remaining permits to Eric Allen to the Department of Fish and Wildlife.

7. The California Department of Fish and Wildlife approved the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara on June 5, 2014, and re-issued the permits in the name of transferee Brian Kiyohara.

8. I was notified on June 12, 2014 that the California Department of Fish and Wildlife was rescinding the successful transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara because more than one year had passed since Mr. Ptak's death.

9. My numerous conversation with Ms. Noriega between December 16, 2013 and June 12, 2014 and the information and analysis Ms. Noriega provided me regarding the transferability of Mr. Ptak's permits lead me to believe any time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit must be submitted to the California Department of Fish and Wildlife was tolled while Mr. Ptak's estate was being probated.

//

//

//

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: August 25, 2014

GREENMAN, LACY, KLEIN
O'HARRA, & HEFFRON

BY:



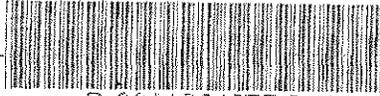
CHRISTOPHER SHOURDS

Exhibit E

14 CLE

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
NEARSHORE TRAP ENDORSEMENT -
SOUTH COAST

Valid only when in possession of a
Commercial Fishing License for the
same license year.



D-0011064277-8

Nearshore Trap Endorsement - South Coast (Transferable)
Permit Number: TST022

Commercial Fishing License ID: L74934

GO ID:

STATE ID:

BRIAN KIYOHARA

SEX: M HAIR: Black EYES: Brown
HT:

Resident: I have resided in California continuously for the past 6
months

Doc No: D-0011064277-8
Trans: 00000008246185
155591444

Outlet No: 310001-002
6/5/2014 10:48:53 AM

Item	Fee*
Nearshore Trap - S Coast (T)	\$106.35
Total: \$106.35	

*Includes any applicable application fees, agent handling fees
and license buyer surcharge.

I certify under penalty of perjury under the laws of the State of
California that all information on this document is true and
correct and that I meet the requirements for these licenses. I
understand it is unlawful to make any false statement in this
application or to use or possess a license obtained by fraud or
deceit (Fish and Game Code §§1052(b) and 1054).

X

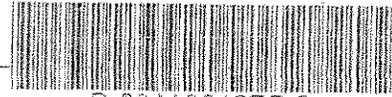
Signature: NOT VALID UNLESS SIGNED
LICENSE AND PHOTO IDENTIFICATION MUST BE IN
IMMEDIATE POSSESSION WHILE FISHING

--- End of Document D-0011064277-8 ---

14 CLE

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
NEARSHORE FISHERY PERMIT -
SOUTH COAST

Valid only when in possession of a
Commercial Fishing License for the
same license year.



D-0011064275-6

Nearshore - South Coast (Transferable)
Permit Number: NST066

Commercial Fishing License ID: L74934

GO ID:

STATE ID:

BRIAN KIYOHARA

SEX: M HAIR: Black EYES: Brown
HT:

Resident: I have resided in California continuously for the past 6
months

Doc No: D-0011064275-6
Trans: 00000008246185
155591444

Outlet No: 310001-002
6/5/2014 10:49:52 AM

Item	Fee*
Nearshore Fish - S Coast (T)	\$596.25
Total: \$696.25	

*Includes any applicable application fees, agent handling fees
and license buyer surcharge.

I certify under penalty of perjury under the laws of the State of
California that all information on this document is true and
correct and that I meet the requirements for these licenses. I
understand it is unlawful to make any false statement in this
application or to use or possess a license obtained by fraud or
deceit (Fish and Game Code §§1052(b) and 1054).

X

Signature: NOT VALID UNLESS SIGNED
LICENSE AND PHOTO IDENTIFICATION MUST BE IN
IMMEDIATE POSSESSION WHILE FISHING

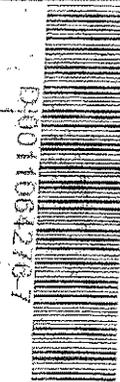
--- End of Document D-0011064275-6 ---

Item	Fee
Not Nearshore Transfer Offset Fee	\$596.2
Nearshore Fish Permit Transfer Fee	\$500.0
Nearshore Trip Endorsement Transfer Fee	\$75.0
Total: \$1,271.2	

*Includes any applicable application fees, agent handling fees
and license buyer surcharge.

End of Document D-0011064275-7

GO ID:
STATE
BRIAN KIYOHARA



D-0011064275-7

This is not a license.

14
STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
RECEIPT ONLY
RCT

Exhibit B

Commissioners
Michael Sutton, President
Monterey
Jack Baylis, Vice President
Los Angeles
Jim Kellogg, Member
Discovery Bay
Richard Rogers, Member
Santa Barbara
Jacque Hostler-Carmesin, Member
McKinleyville

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
(916) 653-5040 Fax
www.fgc.ca.gov

Fish and Game Commission



CERTIFIED MAIL

December 19, 2014

Mr. Chris Shourds, Esq.
Mr. Kurt Weiser, Esq.
Greenman, Lacy, Klein, O'Harra & Heffron
900 Pier Way
Oceanside, CA 92049-0299

Ms. Christine Allen, Executor
Estate of Thomas L. Ptak

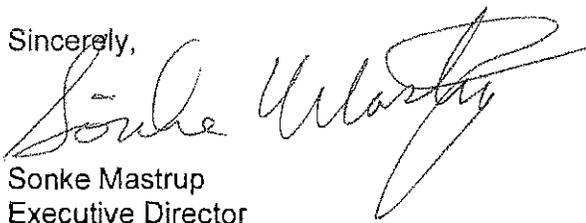
Dear Messrs. Shourds and Weiser and Ms. Allen:

At its meeting on December 3 in Van Nuys, the California Fish and Game Commission (Commission) considered your request for an extension of time to transfer Thomas L. Ptak's transferable Nearshore Fishery Permit and Nearshore Fishery Trap Endorsement for the South Coast Management Area.

The Commission approved an extension until December 15, 2015 to transfer Mr. Ptak's permit and endorsement. Please contact the California Department of Fish and Wildlife's License and Revenue Branch for more information about how to proceed.

If you have any questions about the Commission's action, please contact Melissa Miller-Henson of my staff at 916.653.6184 or Melissa.Miller-Henson@fgc.ca.gov.

Sincerely,


Sonke Mastrup
Executive Director

Messrs. Shourds and Weiser, Ms. Allen

Page 2 of 2

December 19, 2014

ec: Christopher Ames, Office of the Attorney General, California Department of Justice,
Christopher.Ames@doj.ca.gov
David Kiene, Office of the General Counsel, California Department of Fish and
Wildlife, David.Kiene@wildlife.ca.gov
David Bess, Law Enforcement Division, California Department of Fish and Wildlife,
David.Bess@wildlife.ca.gov
James Fong, License and Revenue Branch, California Department of Fish and
Wildlife, James.Fong@wildlife.ca.gov



GREENMAN, LACY, KLEIN,
HINDS, WEISER & HEFFRON
— ATTORNEYS AT LAW —

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JANET BLEDSOE LACY
MICHAEL L. KLEIN
KAREN M. HEFFRON **‡
KELLY L. HINDS*
KURT WEISER*

KENNETH L. GREENMAN, JR.*
OF COUNSEL

* PROFESSIONAL CORPORATION
** CERTIFIED SPECIALIST, FAMILY LAW,
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION
‡ FELLOW, AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS

900 PIER VIEW WAY
POST OFFICE BOX 299
OCEANSIDE, CA 92049-0299
(760) 722-1234 • FAX: (760) 722-5860

KATIE A. ANDERSON**
JEFFREY BLEDSOE LACY
KIMBERLY A. DAWSON
CHRISTOPHER SHOURDS
ANGELA JENKINS

LA JOLLA OFFICE
7825 FAY AVENUE
SUITE 200
LA JOLLA, CA 92037
(858) 459-9282

November 12, 2015

Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

**REQUEST FOR EXTENSION OF TIME TO TRANSFER THOMAS L. PTAK'S
TRANSFERRABLE SOUTH COAST REGION NEARSHORE FISHERY TRAP
ENDORSEMENT**

Dear Fish and Game Commission:

At its meeting on December 3, 2014, in Van Nuys, the California Fish and Game Commission (the "Commission") approved a request for extension of time to transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement. The Commission extended the time in which this trap endorsement could be transferred to December 15, 2015. This is a formal request to the Commission for an additional one year extension of time to transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement.

I.

Background

Thomas L. Ptak died on March 13, 2012. Christine Allen, Mr. Ptak's partner of 16 years immediately retained the law firm Greenman, Lacy, Klein, Hinds, Weiser & Heffron (hereinafter "Attorneys") to assist her in administering Mr. Ptak's affairs. This included getting Christine Allen appointed as Executor of Mr. Ptak's probate estate and communicating with the Department of Fish and Wildlife regarding Mr. Ptak's commercial fishing permits. The probate estate of Mr. Ptak is still open today and Christine Allen

remains the duly appointed Executor by order of the Superior Court of California, County of San Diego.

Attorneys began communication with the California Department of Fish and Wildlife upon Mr. Ptak's death regarding the procedure in which to transfer Mr. Ptak's commercial fishing permits, including the transferrable Nearshore South Coast Region Nearshore Fishery Trap Endorsement that is the subject of this request for additional time to transfer.

Attorneys stayed in regular communication with Ms. Debbie Noriega at the Department of Fish and Wildlife from the time Mr. Ptak died and relied on the information and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's permits. On June 5, 2014, the probate estate of Mr. Ptak followed transfer instructions provided by Ms. Noriega and sold Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement. The Department of Fish and Wildlife approved the transfer and issued the permit in the name of the buyer.

On June 22, 2014, Christine Allen, the buyer of the permit, and Attorneys were notified that the successful transfer of Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement was rescinded. Attorneys immediately contacted Ms. Noriega who informed Attorneys that the transfer was rescinded because more than one year had passed since Mr. Ptak's death. Ms. Noriega stated she "felt horrible and was as surprised as we were."

Attorneys filed an Appeal of Denial of Application to Transfer Thomas L. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement with the Commission on August 22, 2014. The main grounds for the appeal was that Attorneys began communicating and working with Ms. Noriega within six (6) days of Mr. Ptak's death, were in regular communication with Ms. Noriega since March 13, 2012, and followed the advice and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement.

A copy of the Appeal for Denial of Application to Transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement, including all exhibits filed with said appeal is attached to this Request for Extension of time as **Exhibit "A"** and incorporated herein.

On December 19, 2014, Attorneys and Executor Christine Allen received a letter from the Commission approving an extension of time until December 15, 2015 to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement. A copy of this letter from the Commission is attached to this Request for Extension of time as **Exhibit "B"** and incorporated herein.

II.

Estate of Thomas L. Ptak Puts Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement Up For Sale

Christine Allen, in her capacity as Executor of the probate estate of Thomas L. Ptak, began marketing Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement immediately after receiving the Commissions approval extending the time of transfer to December 15, 2015.

Christine Allen also continued to operate Mr. Ptak's commercial fishing business as an ongoing business concern of the Estate of Thomas L. Ptak as she had done since Mr. Ptak's death. The goal of continuing to operate the commercial fishing business was to attempt to generate sufficient income to pay of the creditor of the Estate of Thomas L. Ptak.

In order for Christine Allen to continue operating Mr. Ptak's commercial fishing business as an ongoing business concern of The Estate of Thomas L. Ptak, she continued to enlist the services of Eric Allen. Eric Allen is Mr. Ptak's long time crew member and an experienced commercial fisherman who has been involved in assisting the Estate of Thomas L. Ptak since Mr. Ptak died.

When Mr. Ptak died, the Superior Court of California, County of San Diego, appointed Eric Allen as the Special Administrator of the Estate of Thomas L. Ptak. Eric was appointed due to his familiarity of Mr. Ptak's commercial fishing business and due to his long history of working with Mr. Ptak. Eric Allen held the role of Special Administrator of the Estate of Thomas L. Ptak until the Court appointed Christine Allen Executor of the Estate of Thomas L. Ptak on September 18, 2012. At all times since, Christine Allen has enlisted the services of Eric Allen to operate Mr. Ptak's commercial fishing business as an ongoing business concern of the Estate of Thomas L. Ptak with the goal of generating sufficient income to pay off the creditors of the estate.

III.

Department of Fish and Wildlife Seizes Mr. Ptak's Commercial Fishing Permits

On March 18, 2015, Eric Allen was fishing on behalf of the probate Estate of Thomas L. Ptak aboard the vessel Donna Marie, a vessel that was an asset of probate estate. Mr. Allen was fishing using a General Gill/Trammel Net Permit that was current and issued in the name of Thomas L. Ptak. This permit is an asset of probate Estate of Thomas L. Ptak and has been listed and valued on an Inventory and Appraisal filed with the Superior Court of California, County of San Diego, on February 6, 2013.

It is important to know that on March 18, 2015, Eric Allen was not fishing with the transferrable South Coast Region Nearshore Fishery Permit or Transferrable South Coast

Region Nearshore Fishery Trap Endorsement in which the Commission granted the extension of time to transfer until December 15, 2015.

While fishing on March 18, 2015, Eric Allen was boarded by the Department of Fish and Game. The Department of Fish and Game escorted Eric Allen and the vessel Donna Marie back to the vessel's slip in Oceanside Harbor and issued Eric a citation for the following: No Commercial Fishing License; Permittee (Thomas L. Ptak) required to be on vessel; Department of Fish and Game Boat Registration Required; and Department of Fish and Game Boat Registration required aboard at all times.

Once at Oceanside Harbor Eric Allen went to his truck to obtain the following documents and permits, all of which were seized by the Department of Fish and Game: one transferrable South Coast Region Nearshore Fishery Permit issued in the name of Thomas Ptak; one transferrable South Coast Region Nearshore Trap Endorsement issued in the name of Thomas Ptak; one General Gill/Trammel Net Permit issued in the name of Thomas Ptak; one Lobster Operator Permit issued in the name of Thomas Ptak; one Southern Rock Crab Permit issued in the name of Thomas Ptak; the boat registration for the vessel Donna Marie; and one current Commercial Fishing License issued in the name of Thomas Ptak.

All permits seized were assets of the probate Estate of Thomas L. Ptak and were listed as such with the Superior Court of California, County of San Diego, and valued by a probate referee in an Inventory and Appraisal of assets owned by the probate Estate of Thomas L. Ptak filed with said Court on February 6, 2013.

Eric Allen being boarded by the Department of Fish and Game on March 18, 2015 resulted in two pending misdemeanor charges against Eric Allen. The first is for Fishing Without a Commercial License. The second is for Failure to Apply for Commercial Boat Registration.

The misdemeanor charges are not the subject of this request for extension of time. However, the events that have transpired are directly relevant to the reason the Estate of Thomas L. Ptak is requesting additional time to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Report.

Christine Allen, as the Executor of the Estate of Thomas L. Ptak has not been able to market or sell Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement since March 18, 2015 because the Department of Fish and Game seized the permits on March 18, 2015 and the Department of Fish and Wildlife will not return the permit to Christine Allen or the Estate of Thomas L. Ptak.

The result is that Christine Allen was granted a one year extension of time to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement but has been deprived of approximately nine (9) months of this one year extension because the permit has been held by the Department of Fish and Wildlife rather than being in the possession of Christine Allen.

IV.

Estate of Thomas L. Ptak Attempts To Regain Permits From Department of Fish and Wildlife

Attorneys, on behalf of Christine Allen, Executor of the Estate of Thomas L. Ptak, contacted David Kiene at the California Department of Fish and Wildlife, Office of the General Counsel on April 3, 2015. Attorneys discussed with Mr. Kiene the seizure of Mr. Ptak's permits that are assets of the probate Estate of Thomas L. Ptak. In particular, Attorneys requested that Mr. Ptak's transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement be returned to the Estate of Thomas L. Ptak so these permits could be marketed and sold by December 15, 2015, the time in which the Commission granted their extension for transfer.

Mr. Kiene stated that he would look into the matter but that the permits may not be able to be returned to the Estate of Thomas L. Ptak because they have potential evidentiary value for the citations issued against Eric Allen. Attorneys explained that The Estate of Thomas L. Ptak was no longer fishing, would not fish the permits if returned, and that the vessel Donna Marie (the fishing boat owned by the Estate of Thomas L. Ptak) was parked and listed for sale. Attorneys again requested return of Mr. Ptak's transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement so these permits could be sold before the extension of time granted by the Commission expired. Attorneys explained to Mr. Kiene that they did not understand how the transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement had evidentiary value that was any different or more substantive than a copy of the permits would have.

Mr. Kiene informed Attorneys he would discuss the issue with his enforcement division and get back to Attorneys regarding Attorneys request for the return of the transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement. Mr. Kiene never responded to Attorneys or to Christine Allen via telephone, letter, email, or any other form of communication.

Attorneys followed up with Mr. Kiene via telephone but never received a call back. To date, Attorneys and Christine Allen have received no communication, written or otherwise, from the Department of Fish and Wildlife since April 3, 2015.

V.

Why The Estate of Thomas L. Ptak Needs Additional Time to Transfer Permit

The probate Estate of Thomas L. Ptak has not been afforded sufficient opportunity to transfer the transferrable South Coast Region Nearshore Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement because these permits have been held by the Department of Fish and Wildlife since March 18, 2015.

VI.

Additional Pertinent Information

The Estate of Thomas L. Ptak sold the vessel Donna Marie and is no longer fishing. The Estate of Thomas L. Ptak has not fished since March 18, 2015 and has no plans to fish. The Estate of Thomas L. Ptak sold the vast majority of the commercial fishing equipment owned by the Estate of Thomas L. Ptak. Any remaining fishing equipment owned by the Estate of Thomas L. Ptak is for sale. The probate of the Estate of Thomas L. Ptak is still an open case with the Superior Court of California, County of San Diego. Christine Allen is still the duly appointed Executor of the Estate of Thomas L. Ptak.

In addition to Mr. Ptak's transferrable South Couth Coast Region Nearshore Fishery Permit and Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement, The California Department of Fish and Wildlife is holding the following permits that are assets of the Estate of Thomas L. Ptak: one General Gill/Trammel Net Permit; one Lobster Operator Permit; and one Southern Rock Crab Permit (collectively referred to hereafter as "The Five Permits"). All of The Five Permits were seized by the Department of Fish and Wildlife on March 18, 2015 and have not been returned to the Estate of Thomas L. Ptak, thus depriving the Estate of Thomas L. Ptak the ability to transfer these permits by following the advice and instruction Ms. Noriega provided Attorneys and the Estate of Thomas L. Ptak beginning six (6) days following the death of Mr. Ptak.

VII.

Request for Additional Extension of time

Based on the information addressed in this Request For Extension of Time To Transfer Thomas L. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement, the Estate of Thomas L. Ptak respectfully requests from the Commission an additional one (1) year extension of time to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Trap Endorsement.

VIII.

Request for Right to Renew Permits

The Estate of Thomas L. Ptak requests the Commission issue an instruction to the Department of Fish and Wildlife to allow the Estate of Thomas L. Ptak to renew The Five Permits so The Five Permits will not expire and so the Estate of Thomas L. Ptak has the opportunity to transfer the permits by following the advice and instruction Ms. Noriega provided Attorneys and the Estate of Thomas L. Ptak beginning six (6) days following the death of Mr. Ptak.

IX.

Request for Return of Permits

The Estate of Thomas L. Ptak requests the Commission issue an instruction to the Department of Fish and Wildlife to return The Five Permits to the Estate of Thomas L. Ptak. Return of these permits is necessary because the Estate of Thomas L. Ptak cannot transfer the permits by following the advice and instruction Ms. Noriega provided Attorneys and the Estate of Thomas L. Ptak beginning six (6) days following the death of Mr. Ptak unless the Estate of Thomas L. Ptak is in possession of these permits. The instruction should direct The Five Permits be returned to Christine Allen, Executor, The Estate of Thomas L. Ptak,

X.

Final Comments

Thank you for your time and consideration in reviewing the Estate of Thomas L. Ptak's requests contained in this document.

Very Truly Yours,

GREENMAN, LACY, KLEIN,
HINDS, WEISER & HEFFRON,
Attorneys for Christine Allen, Executor



CHRIS SHOURDS, ESQ.

ESTATE OF THOMAS L. PTAK



CHRISTINE ALLEN, Executor of the
Estate of Thomas L. Ptak

Exhibit A

**GREENMAN, LACY, KLEIN,
O'HARRA & HEFFRON**

KENNETH L. GREENMAN, JR.*
JANET BLEDSOE LACY
MICHAEL L. KLEIN
KAREN M. HEFFRON ** †
KELLY L. HINDS
KURT WEISER

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

900 PIER VIEW WAY
POST OFFICE BOX 299
OCEANSIDE, CA 92049-0299
(760) 722-1234 FAX: (760) 722-5860

ARTHUR E. GORE
1919-2002
RUSSELL W. GROSSE
COLLEEN C. O'HARRA
RETIRED
KENNETH L. GREENMAN, JR.
OF COUNSEL

KATIE A. ANDERSON **
JEFFREY BLEDSOE LACY
JENNIFER BLEDSOE LACY
KIMBERLY A. DAWSON
MARIANNE LALEUF-THOM
CHRISTOPHER SHOURDS

* A Professional Corporation
** Certified Specialist, Family Law,
The State Bar of California Board
of Legal Specialization
† Fellow, American Academy of
Matrimonial Lawyers

LA JOLLA OFFICE
7825 FAY AVENUE
SUITE 200
LA JOLLA, CA 92037-4252
(858) 459-9282

August 22, 2014

Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

**APPEAL OF DENIAL OF APPLICATION TO TRANSFER THOMAS L. PTAK'S
TRANSFERABLE SOUTH COAST REGION NEARSHORE FISHERY TRAP
ENDORSEMENT**

Dear Fish and Game Commission:

This appeal is in response to the July 3, 2014 Notice of Denial of Application to Transfer Thomas L. Ptak's Transferable South Coast Region Nearshore Fishery Trap Endorsement addressed to Christine Allen as Executor of the Estate of Thomas L. Ptak. A copy of this Notice of Denial is attached to and incorporated herein as Exhibit A.

I.

Reason Given for Denial

The application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement was denied because the application was submitted more than one year after Mr. Ptak's date of Death.

II.

Basis for Appeal

Thomas Leonard Ptak died on March 13, 2012. A copy of his death certificate is attached to and incorporated herein as Exhibit B.

Christine Allen, Mr. Ptak's partner of 16 years, immediately retained the law firm Greenman, Lacy, Klein, O'Harra & Heffron (hereinafter "Attorneys") to assist her in administering Mr. Ptak's affairs. This included communicating with the California Department of Fish and Wildlife regarding Mr. Ptak's commercial fishing permits and handling the Probate of Mr. Ptak's Estate.

Attorneys enlisted the assistance of commercial fisherman Ken Bates due to his understanding of the unique nature of the commercial fishing permits owned by Mr. Ptak. On behalf of Attorneys, Ken Bates first contacted Debbie Noriega at the Department of Fish and Wildlife on March 19, 2012 only six (6) days following Mr. Ptak's death. Ken Bates notified Ms. Noriega that Mr. Ptak died, confirmed that Mr. Ptak owned five commercial fishing permits, obtained information on how Mr. Ptak's permits could be transferred, and obtained instruction on how Mr. Ptak's personal representative Christine Allen could apply for the transfer of Mr. Ptak's commercial fishing permits. Ms. Noriega provided invaluable assistance and shared extensive knowledge regarding the permits owned by Mr. Ptak. However, at no time did Ms. Noriega explain to Mr. Bates that there was a time frame in which Mr. Ptak's permits must be transferred.

Attorney Kurt Weiser of the law firm Greenman, Lacy, Klein, O'Harra & Heffron spoke directly to Ms. Noriega two times within one year of Mr. Ptak's death. Attorney Weiser's first conversation with Ms. Noriega took place on or about May 16, 2012. His second conversation with Debbie Noriega took place on or about August 22, 2012. The purpose of these conversations was to discuss the procedure for transferring Mr. Ptak's commercial fishing permits.

Attorney Weiser explained that Mr. Ptak's estate was subject to Probate with the Superior Court of California, County of San Diego and therefore Mr. Ptak's commercial fishing permits would become probate assets. Under the California Probate Code assets, including the permits, can not transfer prior to the time the Probate Court's order to distribute estate assets is issued.

Attorney Weiser informed Ms. Noriega that the Probate of Mr. Ptak's estate would be a lengthy process because no probate can be completed until creditors of the estate are paid. Ms. Noriega informed Attorney Weiser that Mr. Ptak's commercial fishing permits could be retained in Mr. Ptak's probate estate and could be transferred once the probate was complete. Attorneys were appreciative of Ms. Noriega's analysis. However, Ms. Noriega analysis of the transfer of Mr. Ptak's permits never included reference to time frames in which applications to transfer Mr. Ptak's permits must be submitted to the Department of Fish and Wildlife. All of Mr. Ptak's commercial fishing permits are still assets of Mr. Ptak's Probate Estate as of the date of this appeal.

Attorney Weiser and Christine Allen relied on Ms. Noriega's instruction and expertise as a Department of Fish and Wildlife analyst. Attorney Weiser relied on Ms. Noriega's thorough analysis and advice (and lack of any mention of a time limitation). On that basis

Attorney Weiser understood that the time frames in which Mr. Ptak's permits could be transferred would be tolled during the probate. A declaration by Attorney Weiser is attached to and incorporated herein as Exhibit C.

III.

Summary of the Probate of The Estate of Thomas Ptak

Attorneys, on behalf of Petitioner Christine Allen, promptly filed a Petition for Probate of Mr. Ptak's Last Will and Testament and for Letters Testamentary with the Superior Court of California, County of San Diego, on June 1, 2012.

The Superior Court issued an order appointing Christine Allen as the Executor of Mr. Ptak's Will and issued Letters Testamentary to Christine Allen as the Executor of the Will of Mr. Ptak with full authority to administer Mr. Ptak's Probate Estate on September 18, 2012.

Multiple creditors filed creditor's claims against Mr. Ptak's Probate Estate. Claims by creditors of the decedent are very common in probates and occur when the decedent dies with legitimate debt. Attorneys and Christine Allen have worked diligently with these creditors to plan for the payoff of Mr. Ptak's debt so that Mr. Ptak's Probate Estate can generate enough income to pay off these creditors. Attorneys also maintained frequent communication with Ms. Noriega from Mr. Ptak's date of death until present day. These communications include Attorneys providing Ms. Noriega with frequent status updates on the probate of Mr. Ptak's estate. Ms. Noriega continued to provide Attorneys with advice and guidance.

Ms. Noriega advice to hold Mr. Ptak's permits in Mr. Ptak's Probate Estate until the close of probate never wavered. As recently as April 28, 2014, Ms. Noriega advised attorney Weiser that Mr. Ptak's commercial permits could be transferred once the probate of Mr. Ptak's estate is completed. Specifically, Ms. Noriega confirmed with attorney Weiser and attorney Christopher Shourds of Greenman, Lacy, Klein, O'Harra & Heffron that the best way to transfer Mr. Ptak's commercial permits was to continue to hold the permits in Mr. Ptak's probate estate until the probate is complete. Ms. Noriega stated that Attorneys should wait until they receive a court order for distribution of Mr. Ptak's probate assets issued by a Judge of the Superior Court and then submit the court order along with an application to transfer Mr. Ptak's permits to Eric Allen to the Department of Fish and Wildlife.

Further, Ms. Noriega stated that she had communicated with her supervisor and advised Attorneys that this process would result in the successful transfer of Mr. Ptak's permits to Eric Allen. A declaration by attorney Shourds is attached to and incorporated herein as Exhibit D.

IV.

Attorneys Sought Additional Ways to Transfer Permits to Eric Allen Prior to the Close of Mr. Ptak's Probate Estate

Attorney Weiser informed Ms. Noriega that Christine Allen desired to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Eric Allen, Mr. Ptak's long time deckhand and crew member, without the requirement that Eric Allen need to purchase any ancillary permits or endorsements. Ms. Noriega informed Attorney Weiser that this could not be accomplished because Eric Allen was not a blood relative of Mr. Ptak and because the owner of the permits was not a commercial entity in which Eric Allen possessed an ownership interest. Again, Ms. Noriega was cooperative and knowledgeable. Attorneys appreciate the assistance and insight she provided.

On October 7, 2013 attorney Weiser submitted a letter to Ms. Noriega asking the Department of Fish and Wildlife to consider allowing the transfer of Mr. Ptak's permits to Eric Allen, without the need for Eric Allen to acquire any ancillary permits, under the theory that Mr. Ptak and Eric Allen operated the fishing business as a general partnership entity. A general partnership can be legally recognized as a commercial entity in the state of California.

Attorney Weiser's letter informed Ms. Noriega that Eric Allen was paid a "crew share" for the past twelve years. It also explained that Mr. Ptak and Eric Allen split profits, each contributed to expenses, shared equally in the responsibility of maintaining the boat and the rest of the fishing operation, and had the ability to bind each other to contracts and other liabilities. Under these circumstances, attorney Weiser urged the Department of Fish and Wildlife that Mr. Ptak's Probate Estate should be able to transfer the permits to Eric Allen prior to the close of probate without the requirement that Eric Allen purchase any ancillary permits.

Attorneys never received a definitive response to attorney Weiser's October 7th letter despite placing numerous follow up calls to Ms. Noriega between December 16, 2013 and December 30, 2013. Ms. Noriega was supportive in trying to obtain a written response from her supervisors to attorney Weiser's letter. On December 30, 2013, attorney Shourds reached Ms. Noriega via telephone. Ms. Noriega still did not have a response to attorney Weiser's letter. However, Ms. Noriega stated that one or more of Mr. Ptak's permits could be sold prior to the close of probate if the Department of Fish and Wildlife did not approve the transfer of Mr. Ptak's permits to Eric Allen based on the theory that Mr. Ptak and Eric Allen were operating as a general partnership.

Attorneys relayed Ms. Noriega's comments to Christine Allen. Upon hearing Ms. Noriega's statement that one or more of Mr. Ptak's permits could be sold out of Mr. Ptak's Probate Estate, Christine Allen decided that the quickest way to generate income necessary to pay off creditors and close Mr. Ptak's Probate Estate would be to sell one or more of Mr. Ptak's permits.

Four months passed and Attorneys still did not receive a definitive response to their request to transfer Mr. Ptak's permits to Eric Allen based on the theory that Mr. Ptak and Eric Allen were operating as a general partnership. Attorney Weiser left a voicemail for Ms. Noriega on April 7, 2014 expressing Christine Allen's desire to sell Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. Attorneys never received a response to this voicemail.

V.

Department of Fish and Wildlife's Approval of Transfer

On or about April 16, 2014 Christine Allen began working with a broker to sell Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. Christine Allen was introduced to buyer Brian Kiyohara on or about April 21, 2014. On or about April 28, 2014, Attorneys Weiser and Shourds spoke to Ms. Noriega to inform her that Christine Allen was selling Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement.

Attorney Weiser informed Ms. Noriega that the sale of these permits would generate enough income to pay off the creditors of Mr. Ptak's Probate Estate so that the probate could be closed. Again, Ms. Noriega stated that any unsold permits could be held in Mr. Ptak's Probate Estate and transferred to Eric Allen at the close of probate by submitting a court order for distribution issued by a Judge of the Superior Court along with applications to transfer Mr. Ptak's remaining permits to Eric Allen to the Department of Fish and Wildlife.

Christine Allen relied on the information provided by Debbie Noriega and sold Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara.

The Department of Fish and Wildlife approved the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara on June 5, 2014 and re-issued the permits in the name of Brian Kiyohara. Copies of the Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement issued to Brian Kiyohara are attached to and incorporated herein as Exhibit E.

The sale of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement generated enough proceeds that Christine Allen was less than one week away from issuing payment in full to all creditors of Mr. Ptak's Probate Estate. Issuing these payments to creditors would have allowed Christine Allen to close Mr. Ptak's Probate Estate.

VI.

Department of Fish and Wildlife's Recission of Transfer

On June 12, 2014, Christine Allen, Brian Kiyohara, and Attorneys were notified that the successful transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement was rescinded by the Department of Fish and Wildlife even though transferee Brian Kiyohara was already in possession of newly issued permits.

Attorney Weiser immediately contacted Ms. Noriega who informed him that the transfer of the permits was rescinded because more than one year had passed since Mr. Ptak's death. Ms. Norriega stated that she "felt terrible and was surprised as we were."

Christine Allen had already deposited the proceeds from the sale of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement into the bank account for Mr. Ptak's Probate Estate and wrote checks to pay off the creditors of Mr. Ptak's Probate Estate. Fortunately, the checks to the creditors were not yet mailed and were able to be voided.

Christine Allen refunded transferee Brian Kiyohara the full amount that Mr. Kiyohara paid for Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement.

VII.

Additional Pertinent Information

The Probate of the Estate of Mr. Ptak is still ongoing as of the date of this Appeal of Denial of Application to Transfer Thomas L. Ptak's Transferable South Coast Region Nearshore Fishery Trap Endorsement.

Attorneys began communicating and working with Ms. Noriega within six (6) days of Mr. Ptak's death. Attorneys and Christine Allen have not delayed or neglected to attempt to transfer Mr. Ptak's commercial fishing permits. Attorneys have been in regular communication with Ms. Noriega since March 19, 2012 and have followed the advice and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's permits.

The Estate of Mr. Ptak owns one Transferrable South Coast Region Nearshore Fishery Permit, one Transferrable South Coast Region Nearshore Fishery Trap Endorsement, one General Gill/Trammel Net Permit, one Lobster Operator Permit, and one Southern Rock Crab Trap Permit. All of these permits have exceeded the time frame for approval of transfer due to the probate of Mr. Ptak's estate and the same facts contained in this appeal.

Attorneys are hopeful the Fish and Game Commission will approve the request for extension of time (below) and apply it to all permits owned by the Estate of Mr. Ptak. Attorneys are prepared to apply for transfer of each permit owned by the Estate of Mr. Ptak and to appeal any denial to the maximum extent possible.

Attorneys are hopeful this situation can be resolved and the extension of time requested below can be granted without the need to appear at a hearing in front of the Fish and Game Commission.

Attorneys sincerely appreciate the time and resources the Fish and Game Commission put into reading and investigating this Appeal of Denial of Application to Transfer Thomas L. Ptak's Transferable South Coast Region Nearshore Fishery Permit.

VIII.

Request for Relief

Attorneys and Christine Allen, Executor of the Estate of Thomas L. Ptak, hereby request an extension of time to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement. Specifically, Attorneys and Christine Allen, Executor of the Estate of Thomas L. Ptak, formally request from the Fish and Game Commission a nine (9) month extension to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement with the extension beginning on the date that Attorneys and Christine Allen are notified by the Fish and Game Commission that the extension of time has been granted.

Christine Allen plans to use this extension of time to sell Mr. Ptak's Transferable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. This sale will generate enough proceeds that creditors of Mr. Ptak's Probate Estate can be paid off and Attorneys' can file a petition with the Superior Court to close the probate and distribute Mr. Ptak's remaining assets.

Christine Allen, at the time probate can be closed, plans to transfer all of Mr. Ptak's remaining permits to Eric Allen so the fishing business can be maintained. The inability to transfer Mr. Ptak's permits by selling one or more permit and transferring the remaining permits at the close of probate will irreparably harm Christine Allen and Eric Allen. Christine and Eric's main source of income comes from the operation of the fishing business Mr. Ptak spent his life developing with the help of Eric Allen as his crew member and deckhand. If the Fish and Game Commission does not grant an extension of time to allow Christine Allen to transfer Mr. Ptak's permits then the Allen family will likely lose everything, including but not limited to the house they live in and the income source they live off of. The extension of time requested above is the best foreseeable way to save the Allen family from financial hardship that would occur if Mr. Ptak's permits become non-transferrable due to the passage of time following Mr. Ptak's Death.

Respectfully Submitted,

GREENMAN, LACY, KLEIN,
O'HARRA & HEFFRON


CHRIS SHOURDS, ESQ.

8/25/14
Date


KURT WEISER, ESQ.

8/25/14
Date

ESTATE OF THOMAS L. PTAK


CHRISTINE ALLEN, Executor of the
Estate of Thomas L. Ptak

8/25/14
Date

Enclosures:

- Exhibit A - Notice of Denial of Application to Transfer Thomas L. Ptak's Transferrable South Coast Region Nearshore Fishery Permit.
- Exhibit B - Death Certificate for Thomas L. Ptak
- Exhibit C - Declaration by Attorney Kurt Weiser
- Exhibit D - Declaration by Attorney Christopher Shourds
- Exhibit E - Copy of Transferrable South Coast Region Nearshore Fishery Report and Transferrable South Coast Region Nearshore Fishery Trap Endorsement Issued to Transferee Brian Kiyohara

Exhibit A



License and Revenue Branch

1740 N. Market Blvd

Sacramento, CA 95834

<http://www.wildlife.ca.gov>



Certified Mail

July 3, 2014

Ms. Christine Allen

SUBJECT: NOTICE OF DENIAL TO TRANSFER TRANSFERABLE SOUTH COAST REGION NEARSHORE FISHERY TRAP ENDORSEMENT

Dear Ms. Allen:

This letter is in response to your application to transfer a 2014-2015 Transferable South Coast Region Nearshore Fishery Trap Endorsement (TSCRNFTE), Permit Number TST022, from Mr. Thomas L. Ptak (L30798). You are the executor of executor of the estate.

Authority- Nearshore Fishery Trap Endorsement

Pursuant to Section 150.03(d), Title 14, of the California Code of Regulations (CCR), a Nearshore Fishery Trap Endorsement (NFTE) may be transferred to another commercial fisherman if the transferee possesses a valid transferable Nearshore Fishery Permit (NFP) for the same regional management area.

Section 150.03(d), Title 14, of the CCR, states a nonrefundable transfer fee of \$75 is required.

Nearshore Fishery Trap Endorsement Requirements

- The NFTE must be valid at the time of application for transfer.
- The transferee must have a valid NFP and Commercial General Trap Permit.
- The transferee must have never been convicted of a violation of any provision of these regulations or the FGC pertaining to the commercial take of nearshore fish stocks.

Required Documentation

- The request for the transfer must be submitted within one year of the date of death of the permit holder as listed on the death certificate.
- Transfer application in the form of a notarized letter which identifies the current permit holder, transferee, and transferable NFTE for the regional management area.
- Copy of the permittee's death certificate.
- Copy of the permittee's valid NFP.
- The permittees' NFTE.
- Copy of the transferee's California Commercial Fishing License and Commercial General Trap Permit.
- Nonrefundable NFTE transfer fee of \$75.

Documentation Submitted

- A notarized letter dated May 9, 2014, received May 23, 2014, from Ms. Christine Allen, Executor of the Estate of Thomas L. Ptak requesting to transfer Mr. Ptak's TSCRNFP and Transferable South Coast Region Nearshore Fishery Trap Endorsement (TSCRNFTE) to Mr. Kiyohara.

Conserving California's Wildlife Since 1870

- Copy of the Certificate of Death from County of San Diego, stating Mr. Ptak's date of death was on March 13, 2012.
- Copy of Letter of Testamentary filed January 31, 2014, for the estate of Thomas L. Ptak, appointing Christine Allen as executor.
- Mr. Ptak's original 2014-2015 TSCRNFTE.
- A copy of Mr. Kiyohara's 2014-2015 California Commercial Fishing License and Commercial General Trap Permit.
- Nonrefundable transfer fee of \$75.

Department of Fish and Wildlife's Recommendation

The Department is denying your application to transfer Mr. Ptak's TSCRNFTE, because the application must be submitted within one year of the date of death of the permit holder as listed on the death certificate. The application was received more than 26 months after the date of death listed on the death certificate.

Deadline to File an Appeal

You may appeal to the Department in writing describing the basis for the appeal. The appeal shall be reviewed and decided by the Department. The decision of the Department may be appealed in writing to the Commission at 1416 Ninth Street, Sacramento, California 95814. Pursuant to Section 150(m)(3), Title 14, of the CCR, your appeal of the Department's decision must be received within 60 days of this letter.

If you have any questions or require further assistance, please contact Ms. Debbie Noriega, of my staff, at the letterhead address, by telephone at (916) 928-5817, or e-mail Debbie.Noriega@wildlife.ca.gov.

Sincerely,



James Fong, Chief
License and Revenue Branch

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

Ms. Debbie Noriega
Department of Fish and Wildlife
Sacramento, CA

Exhibit B

CERTIFICATION OF VITAL RECORD

COUNTY OF SAN DIEGO

3052012050234

CERTIFICATE OF DEATH

3201237004299

STATE REGISTRATION NUMBER: 3052012050234 LOCAL REGISTRATION NUMBER: 3201237004299

1. NAME OF DECEASED - FIRST MIDDLE LAST: THOMAS LEONARD PTAK
 2. MIDDLE: LEONARD
 3. LAST (Family): PTAK

4. SEX: Male Female
 5. RACE: White Black Hispanic Other

6. BIRTH STATE/COUNTRY: CALIFORNIA
 7. BIRTH DATE: 03/13/2012
 8. HOUR OF BIRTH: 0625

9. OCCUPATION: COMMERCIAL FISHERMAN
 10. TYPE OF BUSINESS: COMMERCIAL FISHING
 11. YEARS IN OCCUPATION: 30

12. USUAL RESIDENCE: SAN DIEGO, CALIFORNIA
 13. COUNTY: SAN DIEGO
 14. HOME IN COUNTY: 30
 15. STATE/COUNTRY: CALIFORNIA

16. INFORMANT: CHRISTINE ALLEN, COMPANION
 17. NAME OF DECEASED'S MOTHER: DONNA
 18. MIDDLE: JOANNE
 19. LAST (BIRTH) NAME: HAMLIN

20. DE POSITION DATE: 03/20/2012
 21. PLACE OF DEATH: AT SEA OFF THE COAST OF SAN DIEGO COUNTY
 22. TYPE OF DEATH: CR/SEA
 23. SIGNATURE OF DECEASED: [Blank]

24. NAME OF PHYSICIAN: WILMA WOOTEN, MD
 25. LICENSE NUMBER: FD1528
 26. SIGNATURE OF LOCAL REGISTRAR: WILMA WOOTEN, MD
 27. DATE: 03/19/2012

28. PLACE OF DEATH: SAN DIEGO, CALIFORNIA
 29. CITY: FALLBROOK

30. CAUSE OF DEATH: UNK
 31. ICD-10 CODE: 12-00589
 32. OTHER SIGNIFICANT CONDITIONS: NONE
 33. OPERATIONS PERFORMED: NO

34. SIGNATURE AND TITLE OF CERTIFIER: WILMA WOOTEN, MD
 35. LICENSE NUMBER: FD1528
 36. DATE: 03/16/2012

37. MANNER OF DEATH: Natural
 38. PLACE OF INJURY: [Blank]
 39. LOCATION OF INJURY: [Blank]
 40. SIGNATURE OF CORONER: OTHON J MENA MD
 41. DATE: 03/16/2012
 42. TYPE NAME, TITLE OF CORONER: OTHON J MENA MD, DEP MED EXAMINER

43. BARCODE: *A002401545*
 44. FAX AUTH: [Blank]
 45. CENSUS TRACT: [Blank]

County of San Diego - Department of Health Services - 3851 Rosecrans Street. This is to certify that, if bearing the OFFICIAL SEAL OF THE STATE OF CALIFORNIA, the OFFICIAL SEAL OF SAN DIEGO COUNTY AND THEIR DEPARTMENT OF HEALTH SERVICES EMBOSSED SEAL, this is a true copy of the ORIGINAL DOCUMENT FILED. Required fee paid.

WILMA J. WOOTEN, M.D.
 REGISTRAR OF VITAL RECORDS
 County of San Diego

DATE ISSUED: March 22, 2012

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar

ANY ALTERATION OR ERASURE VOID THIS CERTIFICATE



Exhibit C

KURT WEISER, ESQ.
GREENMAN, LACY, KLEIN,
O'HARRA & HEFFRON
900 Pier View Way, P.O. Box 299
Oceanside, California 92049-0299
(760)722-1234

Attorneys for Christine Allen,
Executor of the Estate of Thomas L. Ptak,

CALIFORNIA FISH AND GAME COMMISSION

IN THE MATTER OF:	)	"EXHIBIT C"
)	
APPEAL OF DENIAL OF	)	DECLARATION OF KURT WEISER IN
APPLICATION TO TRANSFER	)	SUPPORT OF APPEAL OF DENIAL OF
THOMAS L. PTAK'S	)	APPLICATION TO TRANSFER THOMAS
TRANSFERRABLE SOUTH	)	L. PTAK'S TRANSFERRABLE SOUTH
COAST REGION NEARSHORE	)	COAST REGION NEARSHORE FISHERY
FISHERY TRAP	)	TRAP ENDORSEMENT
ENDORSEMENT)	
)	
)	
)	
)	

I, KURT WEISER, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a partner in the law firm of Greenman, Lacy, Klein, O'Harra & Heffron (hereinafter "Attorneys"), the attorneys-of-record for Christine Allen, Executor of the Estate of Thomas L. Ptak. I have personal knowledge to the following facts, except to those matters which I so indicate that are based on information and belief.

2. Thomas Leonard Ptak died on March 13, 2012. I was retained by Christine Allen immediately following Mr. Ptak's death. Christine Allen informed me that Mr. Ptak owned five (5) commercial fishing permits issued by the California Department of Fish and Wildlife.

3. I enlisted the assistance of commercial fisherman Ken Bates to contact the California Department of Fish and Wildlife on my behalf to notify the Department that Mr. Ptak died, confirm that Mr. Ptak owned five commercial fishing permits, obtain information on how Mr. Ptak's permits could be transferred, and obtain instructions on how Mr. Ptak's personal representative Christine Allen could apply for the transfer of Mr. Ptak's permits.

4. Ken Bates contacted Debbie Noriega at the California Department of Fish and Wildlife on March 19, 2012, only six (6) days following Mr. Ptak's death. Mr. Bates notified Ms. Noriega of Mr. Ptak's death and obtained information regarding the transferability of Mr. Ptak's permits. I spoke with Mr. Bates following his conversation with Ms. Norriega and Mr. Bates provided me with the notes he took during his conversation with Ms. Noriega. Based on my information and belief, Ms. Noriega never informed Mr. Bates that there was a time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement must be submitted to the California Department of Fish and Wildlife.

5. I personally spoke to Ms. Noriega two times within one year of Mr. Ptak's death to discuss the procedure for transferring Mr. Ptak's permits. I informed Ms. Noriega that Mr. Ptak's estate was subject to probate with the Superior Court of California, County of San Diego and that Mr. Ptak's commercial fishing permits were subject to the estate and like any estate assets could not be transferred to Eric Allen without closing the probate.

6. I explained to Ms. Noriega that Mr. Ptak's Probate Estate can not be closed until the creditors of the probate estate are paid. Ms. Noriega informed me that Mr. Ptak's commercial fishing permits could be retained in Mr. Ptak's Probate Estate and could be transferred once the probate was complete. I relied on this information provided by Ms.

Noriega. Ms. Noriega never informed me that there was a time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement must be submitted to the California Department of Fish and Wildlife.

7. As recently as April 28, 2014, Ms. Noriega informed me that an acceptable way to transfer Mr. Ptak's permits was to continue to hold the permits in Mr. Ptak's Probate Estate until the probate estate is complete. Ms. Noriega stated that I should wait to receive a court order for distribution of Mr. Ptak's probate assets issued by a Judge of the Superior Court and then submit the court order along with an application to transfer Mr. Ptak's permits to the California Department of Fish and Wildlife.

8. On or about April 28, 2014, Ms. Noriega informed me that one or more of Mr. Ptak's permits could be sold out of Mr. Ptak's Probate Estate in order to generate enough proceeds to pay off the estate's creditors so that the probate could be closed. In reliance on this information, I assisted Christine Allen, Executor of the Estate of Thomas Ptak in selling Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara. The California Department of Fish and Wildlife approved the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara and issued the permit in the name of Brian Kiyohara. The California Department of Fish and Wildlife then rescinded the transfer because the application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement was submitted more than one year after Mr. Ptak's death.

9. I spoke to Ms. Noriega on June 6, 2014 when I learned that the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara had been rescinded. Ms. Noriega stated that she felt terrible and was taken by

surprise.

10. The probate of the Estate of Thomas L. Ptak is still ongoing as of the date of this declaration.

11. I have been in regular communication with Ms. Noriega, with initial assistance from Mr. Bates, since the date of Mr. Ptak's death. I followed the advice and instruction Ms. Noriega provided regarding the transferability of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement. It was my belief based on my conversations with Ms. Noriega that the time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement must be submitted to the California Department of Fish and Wildlife was tolled while Mr. Ptak's Estate was being probated.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: August 25, 2014

GREENMAN, LACY, KLEIN
O'HARRA, & HEFFRON

BY:



KURT WEISER

Exhibit D

CHRISTOPHER SHOURDS, ESQ.
GREENMAN, LACY, KLEIN,
O'HARRA & HEFFRON
900 Pier View Way, P.O. Box 299
Oceanside, California 92049-0299
(760)722-1234

Attorneys for Christine Allen,
Executor of the Estate of Thomas L. Ptak,

CALIFORNIA FISH AND GAME COMMISSION

IN THE MATTER OF:	)	"EXHIBIT D"
)	
APPEAL OF DENIAL OF	)	DECLARATION OF CHRISTOPHER
APPLICATION TO TRANSFER	)	SHOURDS IN SUPPORT OF APPEAL OF
THOMAS L. PTAK'S	)	DENIAL OF APPLICATION TO
TRANSFERRABLE SOUTH	)	TRANSFER THOMAS L. PTAK'S
COAST REGION NEARSHORE	)	TRANSFERRABLE SOUTH COAST
FISHERY TRAP	)	REGION NEARSHORE FISHERY TRAP
ENDORSEMENT	)	ENDORSEMENT
)	
)	
)	

I, CHRISTOPHER SHOURDS, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a associate attorney in the law firm of Greenman, Lacy, Klein, O'Harra & Heffron (hereinafter "Attorneys"), the attorneys-of-record for Christine Allen, Executor of the Estate of Thomas L. Ptak. I have personal knowledge to the following facts, except to those matters which I so indicate that are based on information and belief.

2. My first communication with Debbie Noriega at the California Department of Fish and Wildlife was on December 16, 2013. I contacted Ms. Norriega to follow up to a letter attorney Weiser sent Ms. Noriega on October 7, 2013. Mr. Weiser's letter inquired as to whether Mr. Ptak's commercial fishing permits could be transferred to Eric Allen under

the theory that Mr. Ptak operated his commercial fishing operation as a general partnership entity. Under California law a general partnership is formed whenever two or more people join in a business for profit and share responsibility for management, profits, and liabilities for the debts of the general partners. Mr. Ptak shared profits with Mr. Allen by paying Mr. Allen a "crew share" that was a percentage of their net income. In addition to Mr. Ptak and Mr. Allen splitting profits, they each contributed to expenses, shared equally in the responsibility of maintaining the boat and the rest of the fishing operating, and had the ability to bind each other to contracts and other liabilities.

3. Ms. Noriega was cooperative in telling me she would attempt to have her supervisor prepare a written response to attorney Weiser's letter. No written response or definitive oral response to attorney Weiser's letter was ever received.

4. On December 30, 2014, Ms. Noriega informed me via telephone that one or more of Mr. Ptak's permits could be sold prior to the close of probate if the Department of Fish and Wildlife did not approve the transfer of Mr. Ptak's permits to Mr. Allen based on the theory that Mr. Ptak and Mr. Allen were operating as a general partnership.

5. In April of 2014 I began working to assist Christine Allen in the sale of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement.

6. On or about April 28, 2014, I participated in a telephone call with Ms. Noriega and attorney Weiser. Attorney Weiser informed Ms. Noriega that Christine Allen was selling Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement. Attorney Weiser also informed Ms. Noriega that the sale of these permits would generate enough income to pay off the

creditors of Mr. Ptak's Probate Estate so that the probate could be closed. Ms. Noriega stated that any unsold permits could remain in Mr. Ptak's Probate Estate and be transferred to Eric Allen at the close of probate by submitting a court order for distribution issued by a Judge of the Superior Court along with applications to transfer Mr. Ptak's remaining permits to Eric Allen to the Department of Fish and Wildlife.

7. The California Department of Fish and Wildlife approved the transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara on June 5, 2014, and re-issued the permits in the name of transferee Brian Kiyohara.

8. I was notified on June 12, 2014 that the California Department of Fish and Wildlife was rescinding the successful transfer of Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Permit and Transferrable South Coast Region Nearshore Fishery Trap Endorsement to Brian Kiyohara because more than one year had passed since Mr. Ptak's death.

9. My numerous conversation with Ms. Noriega between December 16, 2013 and June 12, 2014 and the information and analysis Ms. Noriega provided me regarding the transferability of Mr. Ptak's permits lead me to believe any time frame in which an application to transfer Mr. Ptak's Transferrable South Coast Region Nearshore Fishery Trap Endorsement must be submitted to the California Department of Fish and Wildlife was tolled while Mr. Ptak's estate was being probated.

//

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//

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: August 26, 2014

GREENMAN, LACY, KLEIN
O'HARRA, & HEFFRON

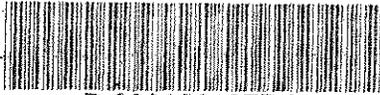
BY: 
CHRISTOPHER SHOURDS

Exhibit E

14 CLE

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
NEARSHORE TRAP ENDORSEMENT -
SOUTH COAST

Valid only when in possession of a
Commercial Fishing License for the
same license year.



D-0011064277-B

Nearshore Trap Endorsement - South Coast (Transferable)
Permit Number: TST022

Commercial Fishing License ID: L74934

GO ID:

STATE

BRIAN KIYOHARA

SEX: M HAIR: Black EYES: Brown

Resident: I have resided in California continuously for the past 6 months

Doc No: D-0011064277-B
Trans: 000000098246185
155591444

Outlet No: 310001-002
6/5/2014 10:49:53 AM

Item	Fee*
Nearshore Trap - S Coast (T)	\$106.35

Total: \$106.35

*Includes any applicable application fees, agent handling fees and license buyer surcharge.

I certify under penalty of perjury under the laws of the State of California that all information on this document is true and correct and that I meet the requirements for these licenses. I understand it is unlawful to make any false statement in this application or to use or possess a license obtained by fraud or deceit (Fish and Game Code §§1052(b) and 1054).

X

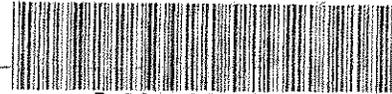
Signature: NOT VALID UNLESS SIGNED
LICENSE AND PHOTO IDENTIFICATION MUST BE IN
IMMEDIATE POSSESSION WHILE FISHING

End of Document D-0011064277-B

14 CLE

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
NEARSHORE FISHERY PERMIT -
SOUTH COAST

Valid only when in possession of a
Commercial Fishing License for the
same license year.



D-0011064275-6

Nearshore - South Coast (Transferable)
Permit Number: NST066

Commercial Fishing License ID: L74934

GO ID:

STATE

BRIAN KIYOHARA

SEX: M HAIR: Black EYES: Brown

Resident: I have resided in California continuously for the past 6 months

Doc No: D-0011064275-6
Trans: 00000008246186
155591444

Outlet No: 310001-002
6/5/2014 10:49:52 AM

Item	Fee*
Nearshore Fish - S Coast (T)	\$696.25

Total: \$696.25

*Includes any applicable application fees, agent handling fees and license buyer surcharge.

I certify under penalty of perjury under the laws of the State of California that all information on this document is true and correct and that I meet the requirements for these licenses. I understand it is unlawful to make any false statement in this application or to use or possess a license obtained by fraud or deceit (Fish and Game Code §§1052(b) and 1054).

X

Signature: NOT VALID UNLESS SIGNED
LICENSE AND PHOTO IDENTIFICATION MUST BE IN
IMMEDIATE POSSESSION WHILE FISHING

End of Document D-0011064275-6

Item	Fee
Zfor1 Nearshore Transfer Offset Fee	\$696.2
Nearshore Fish Per Transfer Fee	\$500.0
Nearshore Trip Endorsmt Transfer Fee	\$75.0
Total:	\$1,271.2

*Includes any applicable application fees, agent handling fees and license buyer surcharge.
End of Document D-0011064276-7

GO ID:
STATE I
BRIAN KIYOHARA



D-0011064276-7

This is not a license.

14
STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
RECEIPT ONLY
R01

Exhibit B

Commissioners
Michael Sutton, President
Monterey
Jack Baylis, Vice President
Los Angeles
Jim Kellogg, Member
Discovery Bay
Richard Rogers, Member
Santa Barbara
Jacque Hostler-Carmesin, Member
McKinleyville

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
(916) 653-5040 Fax
www.fgc.ca.gov

Fish and Game Commission



CERTIFIED MAIL

December 19, 2014

Mr. Chris Shourds, Esq.
Mr. Kurt Weiser, Esq.
Greenman, Lacy, Klein, O'Harra & Heffron
900 Pier Way
Oceanside, CA 92049-0299

Ms. Christine Allen, Executor
Estate of Thomas L. Ptak

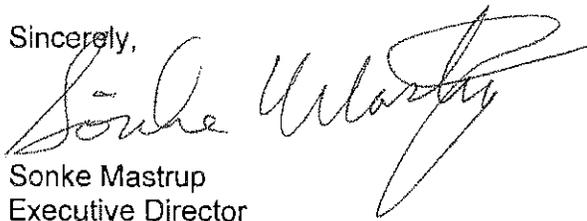
Dear Messrs. Shourds and Weiser and Ms. Allen:

At its meeting on December 3 in Van Nuys, the California Fish and Game Commission (Commission) considered your request for an extension of time to transfer Thomas L. Ptak's transferable Nearshore Fishery Permit and Nearshore Fishery Trap Endorsement for the South Coast Management Area.

The Commission approved an extension until December 15, 2015 to transfer Mr. Ptak's permit and endorsement. Please contact the California Department of Fish and Wildlife's License and Revenue Branch for more information about how to proceed.

If you have any questions about the Commission's action, please contact Melissa Miller-Henson of my staff at 916.653.6184 or Melissa.Miller-Henson@fgc.ca.gov.

Sincerely,


Sonke Mastrup
Executive Director

Messrs. Shourds and Weiser, Ms. Allen
Page 2 of 2
December 19, 2014

cc: Christopher Ames, Office of the Attorney General, California Department of Justice,
Christopher.Ames@doj.ca.gov
David Kiene, Office of the General Counsel, California Department of Fish and
Wildlife, David.Kiene@wildlife.ca.gov
David Bess, Law Enforcement Division, California Department of Fish and Wildlife,
David.Bess@wildlife.ca.gov
James Fong, License and Revenue Branch, California Department of Fish and
Wildlife, James.Fong@wildlife.ca.gov



November 20, 2015

California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Subject: Thomas Ptak Estate's requests

Dear Commissioners:

This letter is in regards to a letter by Chris Shourds dated November 11, 2015 ("Letter"), written on behalf of the Estate of Thomas Ptak ("Estate"), to the Fish and Game Commission ("Commission"), in which the Estate asks the Commission to waive deadlines in regulations and the Fish and Game Code ("Waiver Requests"). These deadlines pertain to the transfer of a nearshore fishery permit (South Coast Region) and nearshore trap endorsement (South Coast Region), and renewal of a southern rock crab trap permit, lobster operator permit, general gill/trammel net permit, nearshore fishery permit, and nearshore trap endorsement that Mr. Ptak had owned (collectively, "Permits"). The Estate is also asking the Department to return the Permits, which it seized earlier this year because of fishing violations committed by a representative of the Estate. Because there is no authority to waive these deadlines, and because the Estate has used the Permits after Mr. Ptak's death to illegally catch over \$135,000 worth of lobsters and crabs, the Department of Wildlife ("Department") objects to the Waiver Requests and request to return the Permits, and asks that the Commission remove these requests as an agenda item.

I. Background

Mr. Ptak possessed a southern rock crab trap permit, lobster operator permit, general gill/trammel net permit, nearshore fishery permit (South Coast Region), and nearshore trap endorsement (South Coast Region). Mr. Ptak died on March 13, 2012. As explained below, each permit has rules and deadlines applying to its transfer after the death of a permittee. Furthermore, each permit could only be used by Mr. Ptak unless they were lawfully transferred after his death: none have been transferred.

With respect to southern rock crab trap permits, California Code of Regulations, title 14 ("Title 14"), section 125, subdivision (a) ("Section 125(a)") states in part that "any person using traps to take, possess aboard a vessel, use as bait, or land rock crab...for commercial purposes shall have a valid general trap permit issued pursuant to Fish and Game Code Section 9001 and either a northern or southern rock crab trap permit..." Upon death of a permittee, an estate "may renew the permit, for the purpose of maintaining its validity, for a period of two (2) years from

the date of death of the permit holder as stated on the death certificate.” (Section 125, subd. (f)(5).) This authorization does not allow anyone to fish for crabs until the transfer is complete. Accordingly, the Estate could not renew the southern rock crab trap permit after March 13, 2014, although it did so on March 28, 2014 and March 12, 2015.¹ (Exhibit A, which is a list printed from the Department’s Automated License Data System showing all of the Permits and the dates that they have been renewed.) The Estate has never submitted an application to transfer the southern rock crab trap permit.

Lobster operator permits have similar restrictions. When taking lobsters, each “operator and crewmember permittee shall have his/her permit in possession.” (Title 14, Section 122 (“Section 122”), subdivision(b).) Upon a permittee’s death, the estate of a lobster operator “may renew that permit as provided for in these regulations if needed to keep it valid” for up to one year, but may not fish with it. (Section 122, subdivision (r)(2).) Thus, the Estate could not renew the lobster operator permit after March 13, 2013, although it did so on March 28, 2014 and March 12, 2015. (Exhibit A.) The Estate has never submitted an application to transfer the lobster operator permit.

Likewise, for a general gill/trammel net permit transfer, “The application for transfer by that person's estate shall be received by the department...within one year of the date of death of the permitholder.” (Fish & G. Code, § 8681.5, subd. (d) (“Section 8681.5(d)”.) An estate may renew a permit only once. If no transfer application is submitted within one year of the death of the permittee, “the permit shall revert to the department for disposition pursuant to Section 8681.” (Section 8681.5(d).) Therefore, the Estate could not renew the gill/trammel net permit after March 13, 2013. Nonetheless, the Estate renewed Mr. Ptak’s general gill/trammel net permit on March 28, 2014 and March 12, 2015. (Exhibit A.) The Estate has never submitted an application to transfer this permit.

Title 14, section 150, subdivision (g)(3) (“Section 150”), which addresses the transfer of a nearshore fishery permit and nearshore fishery endorsement after the death of a permittee, states in part:

A transferable Nearshore Fishery Permit issued pursuant to this section may be transferred to the estate of a permittee who has died only for the purpose of transferring the Nearshore Fishery Permit to another person.

¹ Mr. Ptak’s commercial fishing license was also illegally renewed after his death on these dates and on March 26, 2012.

(A) Such transfer may be considered if the estate makes application, in the form of a notarized letter, for the transfer within one year of the date of death as listed on the death certificate.

...

Since Mr. Ptak's death occurred on March 13, 2012, the Estate was required to submit an application by March 13, 2013.

According to the Estate, Eric Allen, a commercial fisherman and former crewmember of Mr. Ptak, was enlisted by the Executor of the Estate, Christine Allen, "to continue operating Mr. Ptak's commercial fishing business," which was "an ongoing business concern of The Estate of Thomas L. Ptak." (Letter, p. 3.) Mr. Allen has assisted the Estate with Mr. Ptak's fishing business since Mr. Ptak's death. Furthermore, Mr. Allen was formally recognized by the Superior Court of California, County of San Diego, as the Special Administrator of the Estate of Thomas L. Ptak, a title which he held until September 18, 2012. Since that time, according to the Estate, "Christine Allen has enlisted the services of Eric Allen to operate Mr. Ptak's commercial fishing business as an on ongoing business concern of the Estate of Thomas L. Ptak with the goal of generating sufficient income to pay off the creditors of the estate." (Letter, p. 3.)

On May 23, 2014, over two years after Mr. Ptak's death, and over a year after the deadline, the Estate submitted documents to transfer the nearshore fishery permit and nearshore trap endorsement. Because the deadline had passed, the Department denied the transfer application on July 3, 2014. (Exhibit B.)

On August 22, 2014, the Estate submitted a request to the Commission to appeal the Department's denial, and waive Section 150, subdivision (g)(3)(A)'s one-year deadline by extending the deadline by nine months. In support of the Estate's appeal request, attorneys for the Estate, Kurt Weiser and Mr. Shourds, each submitted a declaration, attached to the Letter, claiming that Governmental Program Analyst Debbie Noriega, who has no knowledge or training regarding probate matters, advised them on various probate issues.² They also allege

² Mr. Weiser and Mr. Shourds claim Ms. Noriega told them: "Mr. Ptak's commercial fishing permits could be retained in Mr. Ptak's Probate Estate and could be transferred once the probate was complete." (Weiser Dec., paragraph 6, p. 2); "...one or more of Mr. Ptak's permits could be sold out of Mr. Ptak's Probate Estate in order to generate enough proceeds to pay off the estate's creditors so that the probate could be closed." (Weiser Dec., paragraph 8, p. 3); "...one or more of Mr. Ptak's permits could be sold prior to the close of probate if the Department of Fish and Wildlife did not approve the transfer of Mr. Ptak's permits to Mr. Allen based on the theory that Mr. Ptak and Mr. Allen were operating as a general partnership." (Shourds Dec., paragraph 4, p. 2); and "...any unsold permits could remain in Mr. Ptak's Probate Estate and be transferred to Eric Allen at the close of probate by

that she failed to advise them of a deadline to submit a transfer application, although neither attorney asked her about deadlines, and the transfer deadlines are clearly stated in the regulations. Ms. Noriega vigorously denies making such statements regarding probate, and does not recall discussing any probate matter with them. Even though their law firm, Greenman, Lacy, Klein, Hinds, Weiser & Heffron, has, according to its website, “attorneys specializing in the following practice areas: family law, probate, estate planning...” they maintain that they relied on Ms. Noriega for advice on probate issues.

In lieu of an appeal hearing, on December 3, 2014, the Commission granted the Estate a twelve month extension to complete the transfer—i.e., until December 15, 2015. Since Mr. Ptak died on March 13, 2012, and the deadline to apply for a transfer had already passed on March 13, 2013, this waiver actually extended the deadline from 12 to 45 months. These latest Waiver Requests would again extend the deadlines to submit transfer applications, and renew the Permits, by another twelve months to December, 2016—57 months after Mr. Ptak’s death. Specifically, the deadlines would be extended as follows:

- Southern rock crab trap permit renewal deadline: from March 13, 2014 to December 15, 2016 (33 month extension).
- Lobster operator permit renewal deadline: from March 13, 2013 to December 15, 2016 (45 month extension).
- General gill/trammel net permit renewal deadline: from March 13, 2013 to December 15, 2016 (45 month extension).
- Nearshore fishery permit and nearshore trap endorsement renewal and transfer submission deadlines: from March 13, 2013 to December 15, 2016 (45 month extension).

II. Argument

A. No Authority Exists to Grant the Extension.

There is no authority in the Fish and Game Code or regulations adopted pursuant to the Fish and Game Code allowing the Commission to waive the deadlines for renewing or transferring the Permits. Moreover, the Commission does not have any obligation to even consider the Waiver Requests.

submitting a court order for distribution issued by a Judge of the Superior Court along with applications to transfer Mr. Ptak’s remaining permits to Eric Allen to the Department of Fish and Wildlife.” (Shourds Dec., paragraph 6, pp. 2-3).

B. The Estate Has Received \$135,000 from Illegal Fishing.

Even if the Commission considers the Waiver Requests, the Estate does not deserve any waivers of the rules because it has continually engaged in illegal fishing since Mr. Ptak's death, including illegally fishing for three months after the Commission granted that waiver. The Estate also repeatedly renewed the southern rock crab trap permit, lobster operator permit, and general gill/trammel net permits in violation of Sections 122, subdivision (r)(2), 125 (f)(5), and 8681.5(d), despite an instruction not to do so.

For three years after Mr. Ptak's death, from March 27, 2012 through March 18, 2015, Mr. Allen fished on behalf of the Estate "to continue operating Mr. Ptak's commercial fishing business." (Letter, p. 3.) During that time, Mr. Allen made over 200 landings and caught 5,772.7 pounds of lobsters and 2,211 pounds of southern rock crabs, totaling over **17,000 pounds**, and valued at **\$135,136.52**. Exhibit C is a spreadsheet showing lobster and southern rock crab landings that were made after Mr. Ptak's death while using his southern rock crab trap and lobster operator permits. As explained above, since the lobster operator and southern rock crab trap permits were not transferred, they may not be used. Thus, **all of this fishing was conducted illegally**. Exhibit D is a receipt dated January 27, 2014, that is an example of a landing Mr. Allen made after Mr. Ptak's death while using Mr. Ptak's commercial fishing license (L30798) and lobster permit. In other instances, a fisherman forged Mr. Ptak's signature. Exhibit E is a landing receipt from January 17, 2014, supposedly signed by "TP" even though Thomas Ptak had died nearly two years earlier.

The illegal fishing continued until March 18, 2015, when Department enforcement personnel contacted Mr. Allen while he was fishing and seized the Permits as evidence. There is currently a criminal case pending against Mr. Allen in the Superior Court of San Diego County. As explained previously, the southern rock crab trap permit could not be renewed after March 13, 2014 and the general gill/trammel net and lobster operator permits could not be legally renewed after March 13, 2013. Thus, the Estate lost all interest in them several years ago.

Moreover, on February 18, 2015, the Department warned the Estate in an e-mail that "because Thomas Ptak is deceased, the Estate cannot renew the lobster operator, gill trammel and rock crab permits (although the Estate might have already received renewal applications for these permits)." On March 12, 2015, the Estate renewed all of these Permits anyway. (Exhibit F.)

III. Conclusion

There is no authority in the Fish and Game Code or regulations that allows the Commission to waive the transfer or renewal deadlines, nor is there any legal obligation for the Commission to even consider any of the Estates' requests. And certainly, there is no equitable reason to extend the deadlines another 12 months, from 12 or 24 months to 57 months, since the Estate continued to illegally fish even after the Commission extended the nearshore fishery permit and nearshore fishery endorsement transfer deadline last December. The Estate has already received an enormous benefit--\$135,000--from illegally using the Permits. The Estate's rampant illegal fishing should not be further rewarded by bending the rules to allow it to transfer them.

For these reasons, the Department objects to the Waiver Requests and respectfully requests that the Commission completely remove the Estates various requests as an agenda item.

Sincerely,



DAVID KIENE
Senior Staff Counsel

Exhibit A

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
CHARLES H. BONHAM, Director



Certified Mail

July 3, 2014

Ms. Christine Allen

**SUBJECT: NOTICE OF DENIAL OF AN APPLICATION TO TRANSFER
TRANSFERABLE SOUTH COAST REGION NEARSHORE FISHERY
PERMIT**

Dear Ms. Allen:

This letter is in response to your application to transfer a 2014-2015 Transferable South Coast Region Nearshore Fishery Permit (TSCRNFP), Permit Number NST093 from Mr. Thomas L. Ptak (L30796) to Mr. Brian Kiyohyara (L74934). You are the executor of Mr. Ptak's estate.

Authority-Nearshore Fishery Permit

Pursuant to Section 150(g)(1)(A), Title 14, of the California Code of Regulations (CCR), a transferable Nearshore Fishery Permit (NFP) may be transferred from one person to another. If the number of NFPs in a regional management area is greater than the capacity goal for the regional management area, one additional transferable NFP for the same regional management area must be surrendered to the Department of Fish and Wildlife (Department) for cancellation at the same time the application for transfer is submitted. The capacity goal for the South Coast Region is 18 permits. As of June 5, 2014, 43 SCRNFPS have been issued, therefore two TSCRNFPS must be surrendered.

Pursuant to Section 150(g)(3), Title 14, of the CCR, a transferable NFP may be transferred to the estate of a permittee who has died only for the purpose of transferring the NFP to another person.

Nearshore Fishery Permit Transfer Requirements

- The NFP(s) must be valid at the time of application for transfer.
- The transferee must have a valid California Commercial Fishing License.
- The transferee must have never been convicted of a violation of any provision of these regulations or the Fish and Game Code (FGC) pertaining to the commercial take of nearshore fish stocks.

Conserving California's Wildlife Since 1870

Required Documentation

- The request for the transfer must be submitted within one year of the date of death of the permit holder as listed on the death certificate.
- Transfer application in the form of a notarized letter which identifies the deceased permit holder, transferee, and transferable NFP for the regional management area.
- Copy of the permittee's death certificate.
- Copy of the permittee's California Commercial Fishing License and original NFP(s).
- Copy of the transferee's California Commercial Fishing License.
- Nonrefundable NFP transfer fee of \$500.

Documentation Submitted

- A notarized letter dated May 9, 2014, received May 23, 2014, from Ms. Christine Allen, Executor of the Estate of Thomas L. Ptak requesting to transfer Mr. Ptak's TSCRNFP and Transferable South Coast Region Nearshore Fishery Trap Endorsement (TSCRNFTE) to Mr. Kiyohara
- A notarized letter dated May 9, 2014, received May 23, 2014, from Eric A. Kramer requesting to transfer his TSCRNFP to Mr. Kiyohara.
- A notarized letter dated May 9, 2014, received May 23, 2014, from Brian Kiyohara, stating that one of the TSCRNFs will be retired to complete the transfer process
- Copy of the Certificate of Death from County of San Diego, stating Mr. Ptak's date of death was on March 13, 2012.
- Copy of Letter of Testamentary filed January 31, 2014, for the estate of Thomas L. Ptak, appointing Christine Allen as executor.
- Mr. Ptak's original 2014-2015 TSCRNFP
- Mr. Kramer's original 2014-2015 TSCRNFP
- A copy of Mr. Kiyohara's 2014-2015 California Commercial Fishing License and Commercial General Trap Permit.
- Nonrefundable transfer fee \$500.

Department of Fish and Wildlife's Recommendation

The Department is denying your application to transfer Mr. Ptak's TSCRNFP, because the application must be submitted within one year of the date of death of the permit holder as listed on the death certificate. The application was received more than 26 months after the date of death listed on the death certificate.

Deadline to File an Appeal

You may appeal to the Department in writing describing the basis for the appeal. The appeal shall be reviewed and decided by the Department. The decision of the Department may be appealed in writing to the Commission at 1416 Ninth Street,

Ms. Christine Allen
July 3, 2014
Page Three

Sacramento, California 95814 Pursuant to Section 150(m)(3), Title 14, of the CCR, your appeal of the Department's decision must be received within 60 days of this letter.

Your application to transfer a Transferable South Coast Region Nearshore Fishery Trap endorsement was addressed under separate cover.

If you have any questions or require further assistance, please contact Ms. Debbie Noriega of my staff, at the letterhead address, by telephone at (916) 928-5817, or e-mail Debbie.Noriega@wildlife.ca.gov.

Sincerely,



James Fort, Chief
License and Revenue Branch

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

Ms. Debbie Noriega
Department of Fish and Wildlife
Sacramento, California

Exhibit C

System: CFIS
cf_cust_landing_rpt

California Department of Fish and Wildlife
Landing Receipts From 03/01/2012 To 11/01/2015

Page: 10
Date: 11/19/2015

Commercial Fishermen: L30798 THOMAS LEONARD PTAK

Year	Serial#	Land Date	Port	Origin	Fish Bus	CFL#	FG#	Market	Rpid Catch	Unit Price	Catch Amt	Use	Cond	Gear	Units
2015															LBS
2015															LBS

cf_landing_receipts

Exhibit D

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

MONTH DAY YEAR
 1 27 13

SEE 2ND PAGE

PERMIT #

0 433493

FISHERMAN LAST NAME

F.I.

ID NUMBER

PORT OF FIRST LANDING

LOCATION WHERE FISH WERE CAUGHT

R
 S
 W
 RAP

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20

CORRECTIONS - FOR FIELD BIOLOGIST USE ONLY

LINE #	FISH CODE	POUNDS	PRICE	CONDITION	GEAR
		,	\$.	
		,	\$.	
		,	\$.	

CHANGES ON BACK

RECEIVED
 FEB 13 2014
 ND WILDLIFE - STAFF
 SALAMITOS, CA

FISHERMAN/PERMITTEE SIGNATURE

[Handwritten Signature]

RECEIVED BY

[Handwritten Signature]

CERTIFIED UNDER PENALTY OF PERJURY AS TRUE AND CORRECT

Exhibit E

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

MONTH DAY YEAR

SEE 2ND PAGE

PERMIT #

1 17 14

0 433459

FISHERMAN LAST NAME

F.I. ID NUMBER

PORT OF FIRST LANDING

LOCATION WHERE FISH WERE CAUGHT

101

1-

PRIMARY GEAR USED

27

GEAR LEGEND

21 FISH TRAP

22 PRAWN TRAP

27 CRAB / LOBSTER TRAP

OTHER

(BIOLOGIST USE)
FISH CODE

ITE PAD

AK

LINE #	FISH CODE	POUNDS	PRICE	CONDITION	GEAR
			\$		
			\$		
			\$		

CHANGES ON BACK

FISHERMAN/PERMITTEE SIGNATURE

[Signature]

RECEIVED BY

[Signature]

CERTIFIED UNDER PENALTY OF PERJURY AS TRUE AND CORRECT

Exhibit F

From: Kiene, David@Wildlife
Sent: Wednesday, February 18, 2015 2:23 PM
To: 'Chris Shourds'
Subject: RE: Estate of Thomas Ptak Transfer of Nearshore Permit and Trap Endorsement.

Chris,

Below are answers to several questions you have asked.

1. Can the two for one to the buyer be accomplished considering both sellers have and will be surrendering full Nearshore Fishery Permits and Nearshore Trap Endorsements?
A: **Yes.** The second trap endorsement will become null and void once the second Nearshore Fishery Permit is transferred. If the second permit holder would like to transfer his/her endorsement to another party, the second permit holder should submit a request to transfer his/her endorsement at the same time the transfer request for the Nearshore Fishery Permits is submitted.

2. Can the Estate sell its Nearshore Fishery Permit to the buyer now, and the other seller sell his/her Nearshore Fishery Permit later (with the understanding that the transfer would not be effective until the second sale occurs)?
A: **No.** The Department cannot review a transfer request unless two permits are surrendered by the transferors at the same time. The request must include two Transferable Nearshore Fishery Permits for the same regional management area.

3. With respect to the lobster operator, gill trammel and rock crab permits:
 - Does the Estate need to pay transfer application fees before the Department can review transfer applications for these permits?
A: **Yes.** The transfer fees are as follows:
Lobster Operator Permit nonrefundable transfer fee is \$500.
General Gill Net /Trammel Net Permit nonrefundable transfer fee is \$100.
Southern Rock Crab Trap Permit nonrefundable transfer is \$1,000.

 - Assuming the transfer requests are denied, the Estate appeals the denials to the Commission, and the Estate prevails, can these transfer application fees apply to future transfer application fees for these permits?
A: **Yes.** In fact, under this scenario, the Estate would not have to pay additional transfer application fees later as long as the proposed permittees are the same.

Please keep in mind that because Thomas Ptak is deceased, the Estate cannot renew the lobster operator, gill trammel and rock crab permits (although the Estate might have already received renewal applications for these permits).

California Department of Fish and Wildlife
(916) 651-7646
(916) 654-3805 (fax)

From: Chris Shourds [mailto:Chris@glkohlaw.com]
Sent: Wednesday, February 18, 2015 9:28 AM
To: Kiene, David@Wildlife
Subject: RE: Estate of Thomas Ptak Transfer of Nearshore Permit and Trap Endorsement.

Dear David,

Do you have any answer as to whether we can transfer our Southern Region Nearshore Permit and Trap Endorsement to the buyer now and then put the burden on the buyer to obtain the other Nearshore Permit before the buyer can fish the permit?

Also, do you have an answer as to whether we can do the two-for-one transfer if both sellers have a full Southern Region Nearshore Permit and Trap Endorsement (instead of the normal deal where we transfer our permit and trap endorsement to the buyer and the second seller transfers only a Nearshore Permit)?

Any info would be much appreciated as we have a buyer who still seems interested but is a little concerned that our permits are owned and being transferred out of a probate estate.

We want to make sure everything is done proper when we enter negotiations with the buyer so that the transaction will be smooth and not voided this time.

Thanks in advance. I look forward to hearing from you.

Sincerely,

Chris Shourds
Attorney at Law – Estate Planning, Probate, Decedent's Affairs
Greenman, Lacy, Klein, O'Harra & Heffron
PO Box 299, 900 Pier View Way
Oceanside, CA 92049
Office: 760-722-1234
Fax: 760-722-5860
Chris@glkohlaw.com

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From: Kiene, David@Wildlife [mailto:David.Kiene@wildlife.ca.gov]
Sent: Tuesday, February 10, 2015 4:03 PM
To: Chris Shourds
Subject: RE: Estate of Thomas Ptak Transfer of Nearshore Permit and Trap Endorsement.

I received your message—thanks, that answers my question.

David Kiene
Senior Staff Counsel
Office of the General Counsel
California Department of Fish and Wildlife

(916) 651-7646
(916) 654-3805 (fax)

From: Chris Shourds [<mailto:Chris@glkohl.com>]
Sent: Tuesday, February 10, 2015 12:26 PM
To: Kiene, David@Wildlife
Subject: Estate of Thomas Ptak Transfer of Nearshore Permit and Trap Endorsement.

Dear Mr. Kiene,

Thank you for reaching out to me last week to discuss some of the issues surrounding the transfer of Thomas Ptak's permits. I am dropping you this quick line so you have all of my contact info (below in my signature).

It looks like we have a buyer for Mr. Ptak's Southern Region Nearshore Fishery Permit and Nearshore Fishery Trap Endorsement. In addition to the Mr. Ptak's Estate and the buyer there is another seller involved so the two for one can be accomplished. The other seller also has a Nearshore Fishery Permit and Nearshore Trap Endorsement.

Can the two for one to the buyer be accomplished considering both sellers have and will be surrendering full Nearshore Fishery Permits and Nearshore Trap Endorsements?

We are hoping to move forward with the transaction as soon as we hear from you regarding this issue and the other questions we discussed on the telephone last week.

Again, I thank you for your time. I look forward to hearing from you.

Sincerely,

Chris Shourds
Attorney at Law – Estate Planning, Probate, Decedent's Affairs
Greenman, Lacy, Klein, O'Harra & Heffron
PO Box 298, 900 Pier View Way
Oceanside, CA 92049
Office: [760-722-1234](tel:760-722-1234)
Fax: [760-722-5860](tel:760-722-5860)
Chris@glkohl.com

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GREENMAN, LACY, KLEIN,
HINDS, WEISER & HEFFRON
— ATTORNEYS AT LAW —

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JANET BLEDSOE LACY
MICHAEL L. KLEIN
KAREN M. HEFFRON **‡
KELLY L. HINDS*
KURT WEISER*

KENNETH L. GREENMAN, JR.*
OF COUNSEL

* PROFESSIONAL CORPORATION
** CERTIFIED SPECIALIST, FAMILY LAW,
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION
‡ FELLOW, AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS

900 PIER VIEW WAY
POST OFFICE BOX 299
OCEANSIDE, CA 92049-0299
(760) 722-1234 • FAX: (760) 722-5860

KATIE A. ANDERSON**
JEFFREY BLEDSOE LACY
KIMBERLY A. DAWSON
CHRISTOPHER SHOURDS
ANGELA JENKINS

LA JOLLA OFFICE
7825 FAY AVENUE
SUITE 200
LA JOLLA, CA 92037
(858) 459-9282

November 25, 2015

Fish and Game Commission
1416 Ninth Street
Sacramento, California, 95814

**Re: The Estate of Thomas L. Ptak
Response to California Department of Fish and Wildlife's Letter dated
November 20, 2015**

Dear Fish and Game Commission:

This serves as the response to the letter the California Department of Fish and Wildlife (the "Department") wrote to the California Fish and Game Commission (the "Commission") dated November 20, 2015 (the "Department's Letter").

The Department's Letter is creative, yet it is misplaced. The Estate of Thomas L. Ptak has not conducted any illegal fishing. Thomas Ptak died. Christine Allen was duly appointed the Executor of the Estate of Thomas L. Ptak by the Superior Court of California, County of San Diego. The California Probate Code grants Christine Allen the right to continue to operate the decedent's business. In continuing to operate the decedent's business, she has the right to enlist an agent who has the knowledge and expertise necessary to properly carry out the business operations.

Christine Allen's operation of Mr. Ptak's fishing business is legal under the probate code. The Estate of Thomas L. Ptak never tried to take advantage of Department regulations and has never tried to hide information or activity from the Department. Rather, the Estate has been open and transparent with the Department beginning in 2012, only six days following Thomas' death.

In 2014, the Department admitted to Attorneys that the Department really needs to update their permit transfer regulations to account for the death of permit holders whose affairs end up in the probate court system. If this hearing were being held in a court of law, the Department would likely argue this statement is hearsay. However, this statement falls under an exception to the rules of hearsay because it is an admission that the Department's permit transfer regulations are broken and do not provide a fair opportunity for the probate estate of a decedent to transfer the decedent's permits. An admission such as the one made by the Department is not made inadmissible by California hearsay rules. Attorneys understand and respect that the December 9, 2015 Commission meeting is not a hearing in the court of law. However, Attorneys ask the Commission to carefully consider the issue of the transfer of a decedent's permits when the death of a permit holder's affairs find their way into the probate court system.

The Estate of Thomas L. Ptak is on the Commission's agenda for December 9, 2015 because the Estate has not been afforded a fair opportunity to transfer the permits owned by Mr. Ptak. Depriving the Estate of a fair opportunity to transfer Mr. Ptak's permits is inequitable in that it harms the beneficiaries of his Estate. It is unclear to Attorneys and Christine Allen why the Department would desire to harm beneficiaries of the Estate of an individual who dedicated his life to the business of commercial fishing, especially when this deceased individual's estate is being formally conducted as probate in the Superior Court of California, County of San Diego. Depriving the Estate the ability to transfer Mr. Ptak's permits will leave the beneficiaries of his estate in financial hardship.

I.

Clarifications Regarding Background

The Department's Letter states the law firm Greenman, Lacy, Klein, Hinds, Weiser, & Heffron (the "Attorneys") relied on Ms. Noriega for advice on probate issues. The Department's incorrect characterization of Attorneys regular communications with Ms. Noriega lead one to believe Attorneys relied on Ms. Noriega help carry out the probate of the Estate of Thomas L. Ptak. This is not correct. Attorneys never sought advice on probate issues from Ms. Noriega.

Rather, Attorneys did consult with Ms. Noriega on a regular basis regarding the steps required to transfer the Permits. Ms. Noriega provided interpretation of the Department's rules and regulations that apply to the permits owned by the Estate. Attorney also consulted with David Kiene regarding the same. This can be seen in Exhibit F to the Departments Letter. Exhibit F shows open communication between Attorneys and the Department. The email exchange shown is Exhibit F to the Department's Letter clearly show Attorneys were not soliciting probate advice from the Department but openly communicating with the Department regarding the transferability of Mr. Ptak's permits.

The permits are a valuable asset of the Estate. Accordingly, Attorneys sought guidance from the Department on their rules and regulations. This is a prudent and professional

thing to do. Attorneys could not have predicted that relying on the Department's guidance would lead to such peril.

II.

Legal Authority Does Exist To Grant The Extensions

The Department's statement that "No Authority Exists to Grant the Extension" is incorrect and therefore misleading. Attorneys did receive an extension of time from the Commission on December 3, 2014. This shows that authority does exist to grant the extensions requested and that the Commission possesses this authority.

Further, legal authority in the following widely accepted equitable doctrines of law apply.

1) Promissory Estoppel:

Promissory Estoppel, also known as Detrimental Reliance, is an equitable doctrine that states that once a party makes a promise significant enough to cause another party to act on it to their own detriment, relief can only come in the form of the promisor fulfilling the promise.

Here, Attorneys began communicating with the Department within six (6) days of Mr. Ptak's death. At that time Attorneys received detailed instructions from Ms. Noriega on how the estate could transfer the permits. Attorneys relied on Ms. Noriega's instructions and complied with them. Thereafter, attorneys maintained regular communication with the Department. The Department was aware of Mr. Ptak's death and aware that a probate was being conducted for the Estate of Thomas L. Ptak. The Department was aware that Christine Allen was the court appointed Executor of the Probate Estate and that Attorneys represented Christine Allen in her capacity as Executor of the Estate of Thomas L. Ptak.

Each year, from 2013 through 2015, the Department mailed applications to Christine Allen's address of record for the renewal of Mr. Ptak's permits. Each year Christine Allen completed these renewal applications, paid the required renewal fees to the Department, and renewed Mr. Ptak's permits so she could continue to operate the business of the Decedent (discussed above) for the purposes of generating income to pay off the creditors of the probate estate.

The Department had actual knowledge of Mr. Ptak's death and actual knowledge that Mr. Ptak's permits were being fished by his Estate. The Department admits their actual knowledge in their Letter by discussing Landing Receipts for the years 2012 through 2015 and actually submitting these landing receipts as Exhibit C to their Letter.

In addition, the Department's actual knowledge that Mr. Ptak's permits were renewed and up to date is shown by the fact that Ms. Noriega worked with Attorneys to successfully transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit and Trap

Endorsement on June 5, 2014. After consulting with Ms. Noriega from Mr. Ptak's date of death until June 5, 2014 and following Ms. Noriega's exact instructions on transferring Mr. Ptak's permits, the Department then rescinded the transfer by stating too much time had passed since Mr. Ptak's death.

Attorneys appealed the rescission of the successful transfer of Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit and Trap Endorsement and were granted an extension of time by the Commission until December 15, 2015. David Kiene improperly attempted to prevent the estate from renewing the permits prior to their 2015 renewal date and the Department then improperly seized all of Mr. Ptak's permits on March 18, 2015. The Department has been holding all Mr. Ptak's permits since March 18, 2015 including the permits the Commission granted the estate an extension to transfer until December 15, 2015. This is why the Estate now needs an additional extension of time.

Prior to the rescission of the successful transfer on June 5, 2015, the Department, Ms. Noriega, and Mr. Kiene were open and willing to communicate with Attorneys. Since Attorneys were successful in their appeal and granted an extension by the Commission on December 3, 2014, the Department has retaliated by thwarting all attempts by Attorneys to transfer Mr. Ptak's permits.

By sending renewal applications for Mr. Ptak's permits, accepting payments for renewal, and continuing to renew the permits, the Department was clearly making a promise to Christine Allen and the Estate of Thomas L. Ptak that permits would remain valid and be transferrable by sale or at the close of probate. Christine Allen and the Estate of Thomas L. Ptak relied on this promise by continuing to make renewal payments to the Department. This reliance worked to the detriment of Christine Allen and the Estate of Thomas L. Ptak because the Department is now stating that the permits should not have been renewed and should not be transferred, contrary to the advice Christine Allen and Attorneys received from Ms. Noriega when communicating with Ms. Noriega about the transferability of the permits.

It is patently unfair to the Estate of Thomas L. Ptak not to grant an extension on all permits after the Estate relied to its detriment on each annual renewal and the advice the Department provided as to the transferability of the permits.

2) Waiver:

Waiver is an equitable doctrine that states that an act of a person or entity voluntarily giving up a legal right, either by an express statement or by conduct such as not enforcing that right, waives their ability to enforce that legal right.

Attorneys began communicating with the Department within six (6) days of Mr. Ptak's death. At that time Attorneys received detailed instructions from Ms. Noriega on how the estate could transfer the permits. Thereafter, attorneys maintained regular communication with the Department. The Department was aware of Mr. Ptak's death and aware that a probate was being conducted for the Estate of Thomas L. Ptak. The Department was

aware that aware that Christine Allen was the court appointed Executor of the Probate Estate and that Attorneys represented Christine Allen in her capacity as Executor of the Estate of Thomas L. Ptak.

Each year, from 2013 through 2015, the Department mailed applications to Christine Allen's address of record for the renewal of Mr. Ptak's permits. Each year Christine Allen completed these renewal applications, paid the required renewal fees to the Department, and renewed Mr. Ptak's permits so she could continue to operate the business of the Decedent (discussed above) for the purposes of generating income to pay off the creditors of the probate estate.

In her efforts as Executor continuing to operate the business of Mr. Ptak pursuant to the California Probate Code, Christine Allen completed all the proper renewal paperwork for the permits, paid all renewal fees for the permits, and ensured the agent she enlisted to assist in the operation of the business submitted Landing Receipts to the Department.

The Department had actual knowledge that the Estate of Thomas L. Ptak had current permits and was fishing these permits because of the renewal fees, the issuance of current permits annually, and the landing receipts being submitted by Eric Allen to the Department on behalf of the Estate.

The Department had direct contact information for Attorneys and for Christine Allen. Yet, the Department never told Attorneys or Christine Allen that the Estate needed to stop fishing the permits or stop renewing the permits with the exception of one sentence buried in the bottom of an email from David Kiene to Attorneys in 2015. The Department now hinges a major portion of its argument for non-renewal on this one sentence that is likely the only communication that contradicts the actions the Department has taken since 2012, the advice the Department provided regarding the transferability of the permits since 2012, the sending of renewal applications to Christine Allen since 2013, and the collecting of renewal fees since 2013.

Even more egregious, the Department hinges one of its main arguments for non-renewal of the permits on this one sentence. This appears retaliatory. The Commission granted an extension to transfer two permits until December 15, 2015. The Department gladly accepted renewal payments from the Estate for all Mr. Ptak's permits in March of 2015, and issued current permits in March of 2015. It is not logical that the Commission grant an extension to transfer the permits only to have the Department deny the Estate's ability to renew them.

The Department could have contacted Attorneys or Christine Allen at any time. Instead of doing so to discuss the issue of Mr. Ptak's permits, the Department sent a vessel containing armed officers to board the Donna Marie (as asset of the Estate) on the water, arrest Eric Allen, escort Eric Allen to Oceanside Harbor, and then seized all of Mr. Ptak's permits. This all occurred as retaliation after the Commission granted an extension of time on December 3, 2014. This was unnecessary. The Department could have simply called

Attorneys to discuss the permits. By seizing and then keeping the permits, the Department further hampered Christine Allen's ability to facilitate their transfer.

The Department claims the permits should not be renewed because too much time has passed. However, the Department's actions tell a completely different story. The Department sent an application for renewal in 2015, collected renewal fees in 2015, and issued current permits in 2015. The department failed to enforce its right to not issue permits in 2015, continued to tell Attorneys the permits were transferrable and even allowed the Estate to transfer two permits in 2014 before rescinding the transfer by saying too much time had passed.

Based on the Department's actions, they have waived their right to interfere with our extension request.

III.

Additional Pertinent Information

The Department refers to \$135,136.52 worth of landing receipts as if they are ill-gotten earned by Christine Allen and the Estate of Thomas L. Ptak. This dollar amount constitutes nothing more than an estimate of gross receipts. As stated above, the Estate has the right under the probate code to generate sufficient funds necessary to pay off legitimate creditors of the probate. Christine Allen and the beneficiaries of the estate did not walk away with these funds.

These funds first went to pay expenses necessary for the operation of the business including but not limited to fuel, boat repair and maintenance, license renewal, slip rental, bait, and taxes. The net funds after these expenses were deposited into the probate estate bank account to be saved and to pay costs associated with the probate such as court filing fees. Please note that Christine Allen, the beneficiaries of the Estate of Thomas L. Ptak, and Attorneys have not been paid out of these funds. The Department's labeling this an illegal fishing operation is incorrect and prejudicial.

The Department's new allegations that the Estate has been rewarded by rampant illegal fishing and should not be rewarded by bending the rules to allow the Estate to transfer permits is appalling and should be disregarded by the Commission because the Department had knowledge of the Estate's fishing activities, willingly renewed the permits each year, gladly accepted payment for the renewal of the permits, and advised Attorneys on the procedure to transfer the permits beginning six (6) days following Mr. Ptak's death.

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V.

Prayer for Relief

1) Request for Additional Extension of Time

The Estate of Thomas L. Ptak respectfully requests from the Commission an additional one (1) year extension of time to transfer Mr. Ptak's transferrable South Coast Region Nearshore Fishery Permit and transferrable South Coast Region Nearshore Fishery Trap Endorsement.

2) Request for Right to Renew Permits

The Estate of Thomas L. Ptak requests the Commission issue an instruction to the Department of Fish and Wildlife to allow the Estate of Thomas L. Ptak to renew Mr. Ptak's transferrable South Couth Coast Region Nearshore Fishery Permit, transferrable South Coast Region Nearshore Fishery Trap Endorsement, General Gill/Trammel Net Permit, Lobster Operator Permit, and Southern Rock Crab Permit (collectively referred to hereafter as "The Five Permits").

3) Request for Return of Permits

The Estate of Thomas L. Ptak requests the Commission issue an instruction to the Department of Fish and Wildlife to return The Five Permits to the Estate of Thomas L. Ptak. Return of these permits is necessary because the Estate of Thomas L. Ptak cannot transfer the permits by following the advice and instruction Ms. Noriega provided Attorneys and the Estate of Thomas L. Ptak beginning six (6) days following the death of Mr. Ptak unless the Estate of Thomas L. Ptak is in possession of these permits. The Estate of Thomas L. Ptak requests the instruction should direct The Five Permits be returned to Christine Allen, Executor, The Estate of Thomas L. Ptak, California,

V.

Final Comments

Thank you for your time and consideration in reviewing the Estate of Thomas L. Ptak's requests contained in this document.

Very Truly Yours,

GREENMAN, LACY, KLEIN, HINDS, WEISER & HEFFRON



CHRIS SHOURDS, ESQ
Attorney for The Estate of Thomas L. Ptak
and Christine Allen, Executor