

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON FISH AND WILDLIFE COMMISSION

In the matter of

DENNIS LEE STURGELL

TRANSCRIPT OF FEBRUARY 10, 2010
LICENSE REVOCATION BOARD MEETING

OAH Case No. 901273

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LICENSE REVOCATION BOARD MEETING

WILLIAM COOK: I'm Bill Cook, I'm Senior Assistant Attorney General and this is the meeting of the License Revocation Board for the purpose of developing recommendations for the Fish and Wildlife Commission concerning whether Dennis Sturgell's commercial fishing license and crab permit should be revoked. The Board members are Eugene Law, Doug Westerlund and Tom Nowlin and I'm just going to ask each of these gentlemen to let me know whether they're here. Mr. Law, are you there?

EUGENE LAW: Yes.

WILLIAM COOK: Thank you. Mr. Westerlund, are you there?

DOUG WESTERLUND: Yes.

WILLIAM COOK: And Mr. Nowlin, are you there?

TOM NOWLIN: Yes, I'm here.

WILLIAM COOK: Great, all three Board members are here and they're going to be asked to make their decision on the phone today. Let me just note a couple of things for the record so we have a full record and to explain to folks what's going on. Members of the public have the right to listen to the Board's discussion today but they don't have the right to speak. So if you're a member of the public, please put your phone on mute. This meeting is being audio recorded. The Board members will go ahead and discuss the revocation issue during the meeting. When the Board members are ready to decide what recommendations to make to the Commission, then

1 we're going to need to have them speak their recommendations clearly so that we can put them
2 in writing and have them approve it and give it to the Commission. The Board's discussion has
3 to be within the factual record that was developed by the administrative law judge during the
4 hearing that was held last month. We can't bring in any new facts now. If the Board members
5 have a legal question, they can feel free to pipe up and ask me to address it. Now just to frame
6 the issue for you, let me go over the history of the case and I'm drawing on what the
7 administrative law judge put in her proposed order. (2:16) Fisheries laws say that if certain
8 things are proven a license and permit can be revoked for the rest of the calendar (2:24) year.
9 That would be 2009 in this case and after that point, the person can be prevented from reapplying
10 for a period of time after that. The order that was issued in this case was issued by the
11 Commission last summer in August and revoked Mr. Sturgell's license and permit for the rest of
12 2009 and then it also had the effect of preventing him from reapplying until August 4, 2010. The
13 Administrative Law Judge Webster, now she has issued this proposed order in which she is
14 giving her recommendation to the Fish and Wildlife Commission. And her recommendation is
15 that Mr. Sturgell be allowed to reapply by February 4, 2010. So now the Commission, now the
16 decision is going to the Commission and essentially they're going to be asked, "Was it right to
17 revoke Mr. Sturgell's license and permit for the rest of 2009 and when should he be allowed to
18 reapply?" That's where the Commission needs a recommendation from the Board members. So
19 we'll let the Board members take it from here. If they want to discuss what recommendations to
20 make they can go ahead and do that. There's no particular way to do it so I'll leave that up to
21 you. If the Board members are ready to make a decision, they can just go ahead and do that.
22 Just to make sure we keep a record that's clear on this audiotape, when you do make your
23 decision we're going to need to ask each of you to say how you vote so that we can pick that up
24 on the audiotape. So with that, I'm just going to turn it over to Mr. Law, Mr. Westerlund and
25 Mr. Nowlin. How do you want to approach this? Do you want to discuss this? (4:31)
26 **DOUG WESTERLUND:** Yeah I have a couple of questions, I guess for you Bill.

1 **WILLIAM COOK:** I'm going to have to ask each of you to identify yourselves when you go
2 forward?

3 **DOUG WESTERLUND:** Okay, I'll go first. It's Doug Westerlund. (4:49) In the other
4 testimony with Ms. Webster, they say they pulled up 72 untagged buoys and 63 of them
5 belonged to the Genesis A so I was just curious the other 9 obviously belonged to somebody else
6 and I was wondering if they got fined and how much their fine was.

7 **WILLIAM COOK:** You know I don't have an answer to the question and actually I'm not
8 allowed to get into that at this point. Our discussion today has to stay within the record that the
9 judge put together on that hearing day so since there wasn't any testimony on that, I'm afraid we
10 can't get into it right now.

11 **DOUG WESTERLUND:** Okay, on the tracks of Ms. Webster's previous indication (5:40)...

12 **WILLIAM COOK:** Yeah, let me just...you should have that proposed order that she wrote in
13 which she wrote what she understood the facts to be and I think we've also sent you the
14 transcript of the hearing.

15 **DOUG WESTERLUND:** Yep.

16 **WILLIAM COOK:** And with that, with the transcript and with the proposed order and I think
17 we've also provided you with the exhibits, that's all we've got. And I really can't do much more
18 at this point but just point you to those.

19 **EUGENE LAW:** Excuse me, this is Gene here. (6:18) When we were at that hearing, I
20 requested that you send the transcripts from the Clatsop County East and the other case from
21 Tillamook County and was that entered in as evidence too for the information that's in those?

22 **WILLIAM COOK:** Yes, what we were able to do through the state police (6:41) was to get the
23 enforcement files, the criminal files from those cases and they were provided to the judge and
24 she put them in the record. You should've gotten copies of those too, paper copies.

25 **EUGENE LAW:** I have those but that we can use those also?

26

1 **WILLIAM COOK:** Yes, that's right; those were part of the case. Those were exhibits
2 admitted by the judge. I'm sorry to be difficult about that but we've got to be very careful. You
3 know in these cases each side has a chance to the hearing to put things in front of the judge and if
4 they're put in front of the judge and they show up in the transcript for those exhibits were in her
5 order, that's fine we can look at it but we can't go beyond that. (7:26)

6 **DOUG WESTERLUND:** So my next question I guess will be the same problem. I'll ask you
7 about the logbook violations. We have the paperwork here; it shows quite a few other people did
8 not turn in logbooks either. Can we talk about that or is that not...

9 **WILLIAM COOK:** Yeah, I'm afraid again we have to stay within the record that was put in
10 front of this judge. You can enter discussion in coming up with your recommendations. You
11 can talk about fairness and you can talk about whether you think Mr. Sturgell is being treated
12 fairly as compared to other people. But in terms of bringing in new facts about what may have
13 happened to others, if it's not in the record it's not in the record. I'm afraid we're stuck with
14 that. (8:31)

15 **DOUG WESTERLUND:** I see.

16 **WILLIAM COOK:** Anybody else have any questions?

17 **TOM NOWLIN:** This is Tom Nowlin. I have a question. I missed one little part here. You
18 explained that the proposed order by the administrative law judge was ..(inaudible) (9:03) for the
19 remainder of 2009 and then there was a little bit of static or something and I missed the rest of
20 your explaining there.

21 **WILLIAM COOK:** Oh, right. Let me just see if I can point you to the part of the order I was
22 talking about...just a second. You have it in front of you. On her proposed order, I'm looking at
23 page 10. I think we've all got a big stack of paper in front of us. Okay, do you have that in front
24 of you?

25 **TOM NOWLIN:** Well, I thought I did but it must be the wrong one (9:59)...what does the
26 caption say?

1 **WILLIAM COOK:** It says Proposed Order. Yeah, that's it. Now turn to page 8. Now at the
2 top of the page, that's what she proposes and you know she takes a look at both the license and
3 crab permits. You know we do have two things going on. One is the law says that the
4 Commission can revoke a license for the rest of the calendar year so that would've been if you
5 look back at their August order that the Commission issued, that would've meant revoking the
6 license for the rest of 2009. And we talked about okay, we revoke a person for the rest of the
7 year, when can they come back and reapply? So she addresses that and she says, "Make it six
8 months from the date of the August 4 order." So essentially we count six months from August
9 and that brings us up to February 4. That was her recommendation. She is essentially saying, "I
10 think he's been revoked long enough (11:40), you ought to let him reapply."

11 **TOM NOWLIN:** So the Commission for some reason I was under the understanding on
12 occasion (11:59) on the original which his permit was revoked for one year from August 4.

13 **WILLIAM COOK:** That's right.

14 **TOM NOWLIN:** Okay, thanks.

15 **WILLIAM COOK:** Let me step back and go over that again because it is complicated stuff.
16 And it's a little bit of an unusual case. What we have is a situation where as the judge indicated
17 last May, ODFW said, "We propose to do this." And Mr. Sturgell had an opportunity to request
18 a hearing. He was late in requesting his hearing, that's what the judges decided. And because of
19 that, the Commission went ahead in August '09 and issued a final order saying, "We're revoking
20 you for the rest of the year and then we're going to tack on an additional period and if you play it
21 out, that extends to August 4, 2010. And then the Commission said, "Well you know even
22 though he requested late for a hearing, we're going to give him a hearing anyway." So now
23 we're into this hearing that is essentially looking at what they've done and try to decide whether
24 they should undo it or not. So what we've got in front of us is the Commission's existing order
25 would not allow him to reapply until August 4, 2010. This judge has held a hearing and she's
26 come up with a different proposal. She says, "No, I think you should allow him to reapply as of

1 February 4.” So we’ve got some difference there and the question that the Commission is going
2 to look at is, “Why should they come down? (13:51) Should they stay where they were? Should
3 they do what she suggests or should they do something else?” And that’s where the Commission
4 needs your recommendation.

5 **TOM NOWLIN:** Okay. Well, I don’t know how Gene and Doug feel but I think that if you
6 know he’s been well known up and down the (14:18) coast for years to push the envelope you
7 know on laws and what not and you know they’ve come up with this one year thing and I think
8 the Commission, that our recommendation would be the recommendation that they stick with the
9 original one year suspension. If they felt you know that other people are going to look at that
10 and say why does Sturgell get a birdie, you know. I believe our commercial fishing laws are
11 going to have any place and the Commission announced and said, “one year suspension,” I think
12 they need to stick with it. That’s how I feel. (15:02)

13 **DOUG WESTERLUND:** This morning they had a heavy (15:15) box that they found with no
14 tag and they fined him \$500/pot. I think I heard at one time somebody said somebody was fined
15 \$200/pot. These people or some of the people were purposely trying to break the law and they
16 were fined a very small fine and when he...it was after that really with his crew more or less, but
17 they had the tags on the boat, the port of pots. The officer saw them, not like some of these other
18 folks who were purposely trying to cheat. Then they tagged him with what is a \$6200 of cod. It
19 seems to me that he has paid an exuberant amount of fees already, way more than anybody else.
20 I don’t know why he got hit so hard when other people got off so easy. And now we’re
21 purposely trying to Yeah, he paid those fines already, those huge fines (16:34) and then 20
22 days in jail which nobody else had to do. They’re purposely trying to cheat. I’m kind of leaning
23 the other way to agree with Ms. Webster that I think he has paid his restitution already, lost the
24 season, cost him a lot of money for this season he lost, and he paid the big fine, he spent time in
25 jail, lost his big season (17:12). Just when he did show that they were chewing him out and
26 hunting him down more or less, it was in the past 20 (17:22). I recommend myself that I want to

1 go along with Ms. Webster's, administrative law judge's proposed order based on some of those
2 facts. I know also feel a lot of people never turn in these logbooks. It shows here the people
3 who didn't even turn in the logbooks. I know some folks probably around me (17:56) they never
4 have any trouble, never have any conflict with them and all these years they've turn in logbooks
5 and they called them and asked them and they said, "just turn it in." That's all they did, with no
6 huge fines on them (18:11) Anyway, that's how I feel.

7 **EUGENE LAW:** (18:23) I think I'm going to kind of go with Tom on this and I'm going to
8 give you a few reasons why. Dennis is a long time experienced fisherman as testimony he's
9 been fishing for 40 years or better. He knows the game and knows how it works. You don't put
10 tags on the buoys as you're setting gear. I never have; I don't know anybody else who's ever
11 done that. That's the way a professional person would do it. Dennis participated in town hall
12 meetings and understands the pot limits and the tags. I was in plenty of those meetings with him.
13 You know he participated, he knew what the requirements were. The logbook violations that he
14 had indicated a total lack of respect for rules that protect the fisheries. They sent him letters;
15 they asked him, they went out on the boats to get all kinds of (inaudible) (19:31) He needed to
16 participate, to turn in the logbooks. What's so difficult about turning in the logbooks other than
17 to being arrogant? The fishing gear that he was using was on pot tags which actually is unlawful
18 gear and it's diminishing (19:49) the income of all the legal crab pot participants. Whether he
19 was fishing more than 25 pots yet he had 150 tags on his boat and 500 pots in the water.
20 Obviously, he could've been very easily. (20:06) Soon after they seized those 66 pots (he had 66
21 out) (20:13), the police after up, they cited him for 132 lbs of undersized crab in Garibaldi out of
22 4,997 lb. load. Just two days after that, you'd think he'd try and be on the up and up and narrow
23 so he wouldn't get that kind of citation again. (20:41) (inaudible)...all participants not just
24 keeping the honest people on it and for those reasons, I think we need to uphold the one year
25 suspension. Thank you.

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1 **WILLIAM COOK:** Sounds like each of the Board members has spoken. We have two who
2 would recommend to the Commission sticking with their original order and a third member who
3 would agree with the approach of the administrative law judge. I think that takes care of it,
4 gentlemen. Thanks very much. We're going to simply pass on those recommendations: two
5 gentlemen one way, another gentleman the other way; and send that to the Fish and Wildlife
6 Commission. I believe the Commission is hoping to take this up at their March meeting and
7 your recommendations will go to the Commission along with the judge's proposed order.

8 **TOM NOWLIN:** This is Tom Nowlin (21:46), can I make a comment?

9 **WILLIAM COOK:** Sure.

10 **TOM NOWLIN:** You know I respect (inaudible) (21:52) very much. The only thing I wanted
11 to say, I don't know that Dennis has been all that damaged by missing the season. Down in
12 California was really good this year. There was some easy seasons there (22:08) and Dennis was
13 there participating. If he's set in Oregon you know this was a very good year. I'm
14 sure...(inaudible)...but I think he did all right here. I mean I just want to make that comment
15 then he has black cod coming I suppose this spring, summer you know prior to all this but it's
16 effect where he could go to those in California and Washington so he's not altogether out of
17 business (22:42). That's the comment I want to make.

18 **WILLIAM COOK:** Do the Board members have anything else to say?

19 **EUGENE LAW:** Yeah, Tom I think you're right. He can still black cod fish I believe (22:56),
20 he just can't deliver in Oregon so I guess he'll still be able to do that. I was kind of surprised to
21 see in the paperwork that in seven years, three of his vessels never once turned in a logbook. It
22 seems kind of strange. why he had to do that (23:20)...that's why.

23 **DOUG WESTERLUND:** Yeah, I don't like the logbook. I mean (inaudible)...has the logbook
24 (23:29) but I kind of use them for reference year after year myself. You know if you don't turn
25 them in, they're down...(inaudible) (23:38) it's just easier to settle down... (inaudible) it's
26 coming and hanging on your door all the time you know. It seems like they show up and work in

1 the room, you have to turn them in, they want to come and get them when you're really busy and
2 that's something we all have to deal with (24:1).

3 **EUGENE LAW:** Okay, well I do kind of feel (24:05) that...(inaudible)...in some ways but
4 maybe this path brought on yourself too, I don't know. Anyway, that's all I have.

5 **WILLIAM COOK:** Hey gentlemen, thanks. And I think what we're going to do is we're going
6 to try transcribe in writing you know what you said today on this audio recording so that the
7 Commission has the benefit of all your observations. So I thank you very much.

8 **DENNIS STURGELL:** Mr. Cook, this is Mr. Sturgell. I don't know if I was able to make any
9 comments but somebody doesn't have their facts straight. Mr. Law, I never got a ticket for short
10 crabs, maybe they were looked in the records. (24:51) If they write me a ticket when I got short
11 crabs while fishing, I knew I did not. Every gear is short crab ticket... (25:00)

12 **WILLIAM COOK:** Hey I'm sorry but it's really only the Board that gets to talk today.

13 **DENNIS STURGELL:** Seven years of no logbooks that's bullshit too because I turned in
14 logbooks. I talked to that guy too, they come and ask you. I turned in my logbooks. My ticket
15 was for wrongfully filling a couple of pages. Yes they have some and yes I turned in my
16 logbooks. I haven't worked seven years without turning in my logbooks. So you need to get
17 your facts straight.

18 **WILLIAM COOK:** You'll have your chance before the Commission.

19 **DENNIS STURGELL:** I already have that and (25:28) I've already been sent by going to
20 jail....Adios.

21 **WILLIAM COOK:** Thanks to everybody and we'll go ahead and try to transcribe this in
22 writing and pass it on to the Commission. Thanks very much. (25:41)

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