

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

a Proceeding To Revoke the Fishing and Hunting Guide License

- of -

PATRICK A. MAHONEY,

Respondent.

DEC Case No. CO 7-20110601-100

DECISION AND ORDER OF THE COMMISSIONER

January 27, 2014

DECISION AND ORDER OF THE COMMISSIONER

In this administrative enforcement proceeding, staff of the Department of Environmental Conservation (Department) seeks revocation of respondent Patrick A. Mahoney's fishing and hunting guide license based upon respondent's violation of the Department's regulation prohibiting fighting in public fishing rights areas. Department staff seeks to revoke respondent's license as a result of his assault upon William Murray on April 8, 2010, while Mr. Murray was fishing on the Salmon River in the Town of Albion, Oswego County, a public fishing rights area. For the reasons that follow, I conclude that respondent's license should be revoked.

PROCEEDINGS

Respondent Patrick A. Mahoney is the holder of a fishing and hunting guide license issued by the Department on September 9, 2006, with an expiration date of September 9, 2013 (see Guide Identification No. 1619, Hearing Exhibit [Exh] 1A).

Prior to the commencement of this administrative proceeding, respondent was prosecuted in Albion Town Court, Criminal Part, for the April 8, 2010 assault upon Mr. Murray. On May 2, 2011, respondent was convicted, after a jury trial, of third-degree assault, petit larceny, and fighting in a public fishing rights area (see Exh 1C).

Department staff subsequently commenced this proceeding by service of a May 23, 2011, letter notice of intent to revoke respondent's guide license (see Exh 1F). Based upon the Town Court conviction, staff revoked respondent guide license for one year effective June 24, 2011, unless respondent requested a hearing. By letter dated May 27, 2011, respondent requested a stay of the matter pending an appeal from the Town Court judgment of conviction and sentence or, in the alternative, an administrative hearing to challenge the proposed revocation (see Exh 1G).

In an order dated August 26, 2011, County Court, Oswego County, affirmed the Town Court judgment of conviction and sentence (see Exh 1H). Department staff subsequently served a notice of hearing and complaint dated December 28, 2011 upon respondent (Exh 1). In the complaint, Department staff seeks an order of the Commissioner (1) finding that respondent violated 6 NYCRR 59.1 by engaging in fighting or assaulting another person in a public fishing rights area; (2) directing respondent to immediately surrender his license to the Department; (3) revoking respondent's fishing and hunting guide license for one year from the date that the license is surrendered, and declaring respondent ineligible to obtain a new fishing or hunting guide license during the revocation time period; and (4) imposing a civil penalty of \$200.

Respondent filed an answer dated February 2, 2012 (Exh 2). In the answer, respondent alleged three defenses: (1) that respondent's actions on April 8, 2010, were taken in self-defense; (2) that respondent's actions were justified and taken pursuant to an agreement with

the Department to act as a confidential informant for the Department as against Mr. Murray; and (3) that respondent's actions were taken because of the negligent, reckless, and intentional conduct of Department officers in exposing respondent's role as a confidential informant to Mr. Murray.

The matter was referred to the Department's Office of Hearings and Mediation Services for administrative enforcement proceedings pursuant to 6 NYCRR part 622 (see 6 NYCRR 622.1[a][6]), and assigned to Administrative Law Judge (ALJ) Maria E. Villa. The ALJ conducted an adjudicatory hearing on May 16, 2013. After receiving written post-hearing comments from respondent and his wife, Kristin A. Mahoney, ALJ Villa prepared the attached hearing report.¹

DISCUSSION

I adopt in part ALJ Villa's hearing report as my decision in this matter. I agree with the ALJ that the preponderance of record evidence supports the conclusion that on April 8, 2010, respondent violated 6 NYCRR 59.1(k). Section 59.1(k) provides that "[n]o person shall . . . engage in, instigate, aid or encourage a contention or fight, or assault any person" in any public fishing rights areas under the Department's jurisdiction. Under principles of collateral estoppel, or issue preclusion, respondent's violation of section 59.1(k) is established by his conviction in Town Court for fighting in a public fishing rights area (see Ryan v New York Tel. Co., 62 NY2d 494, 500 [1984]; Buechel v Bain, 97 NY2d 295, 304 [2001], cert denied 535 US 1096 [2002]; see also Matter of Locaparra, Decision and Order of the Commissioner, June 16, 2003, at 5-6). In addition, Department staff proved by a preponderance of the record evidence that on April 8, 2010, Mr. Murray was fishing on the Salmon River in the Town of Albion, Oswego County, a public fishing rights area. Department staff also proved on the record that respondent committed a violent, unprovoked, and unjustified assault upon Mr. Murray while Mr. Murray was engaging in fishing on the Salmon River. Thus, respondent's liability for the violation charged is also established on the hearing record.

I further conclude that respondent failed to establish any legitimate defenses to Department staff's charges (see 6 NYCRR 622.11[b][2]). The record contains no evidence supporting respondent's assertion of self-defense, or that the Department made any agreement with respondent that justified his assault upon Mr. Murray. The record also lacks any evidence that Department staff exposed respondent's role in reporting Mr. Murray for illegally snagging fish, which resulted in Mr. Murray being ticketed prior to the incident on April 8, 2010. Thus,

¹ On October 24, 2013, after the completion of the hearing report in this matter, ALJ Villa received a letter from respondent indicating that his application for renewal of his guide license, which expired on September 9, 2013, was denied by the Department. Attached to respondent's letter was a letter from Department staff indicating that the Department will not be reviewing any guide license application by respondent until after the present administrative hearing proceeding is concluded and any revocation that may result from the hearing has been fully served. Upon receipt of respondent's correspondence, ALJ Villa forwarded both letters to my attention.

respondent is liable for the charged violation of 6 NYCRR 59.1(k).

As a penalty for the violation established on this record, I further agree that the serious nature of the assault warrants the revocation of respondent's guide license. ECL 11-0533(7) provides that any licensed guide who violates any provision of the ECL or the regulations adopted pursuant to the ECL's authority "shall in addition to any other penalties, immediately surrender his license to the department, which may be revoked by the department for up to one year following the date of such surrender." Similarly, 6 NYCRR 197.8 provides that after a hearing, the Commissioner may revoke a guide license for up to one year based upon the violation of any provision of the ECL or the regulations at 6 NYCRR (see 6 NYCRR 197.8[a], [b], [d]).

In determining the appropriate revocation period for the offense established, the ALJ recommends that I consider the following factors: (1) the fact that respondent assisted the Department in its enforcement efforts; (2) the length of time remaining on respondent's license (which has since expired); (3) the time that has elapsed since respondent's conviction and sentence was affirmed on appeal to the Oswego County Court; and (4) the fact that respondent has been a licensed guide for twenty years without incident. In consideration of these factors, the ALJ recommends a revocation period of nine to ten months.

I have considered each of the factors recommended by the ALJ, but conclude that several aggravating factors warrant the twelve month revocation period requested by Department staff. First, as to any time frames involved, I note that respondent's guide license remained in force, at least until its expiration in September 2013. Second, respondent's assistance to the Department in the past does not justify respondent unilaterally acting on his unsubstantiated belief that Mr. Murray slashed his tires. Third, although respondent was not charged with any prior incidents, the record contains some evidence that respondent was involved in an altercation with Mr. Murray on at least one prior occasion (see Hearing Report, at 5). Thus, respondent's record is not unblemished.

Finally, and significantly, respondent persists in his mistaken belief that the assault was a "personal matter" unrelated to his guide license. However, fighting in public fishing rights areas is a serious breach of the Department's fishing regulations that directly reflects upon respondent's competence as a licensed fishing and hunting guide in the State of New York. Moreover, the seriousness and violence of respondent's unprovoked assault upon Mr. Murray warrants a twelve month revocation period. In consideration of the fact that respondent's license expired in September 2013, however, respondent's license shall be revoked for one year from the expiration of his prior license.

As to penalty, the maximum penalty of \$200 is warranted and justified on this record.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

I. Respondent Patrick A. Mahoney is adjudged to have violated 6 NYCRR 59.1(k) by committing an assault upon William Murray while Mr. Murray was fishing in the Salmon River in the Town of Albion, Oswego County, a public fishing rights area, on April 8, 2010.

II. Respondent Patrick A. Mahoney is hereby assessed a civil penalty in the amount of two hundred dollars (\$200). The civil penalty shall be due and payable within thirty (30) days after service of this order upon respondent. Payment shall be made in the form of a cashier's check, certified check or money order payable to the order of the "New York State Department of Environmental Conservation" and mailed to the Department at the following address:

Anthony London, Esq.
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233-1550.

III. Within five (5) calendar days of the date of service of this order upon respondent, respondent is directed to surrender his fishing and hunting license certificate, badge and license card to the Department's Region 7 Office at 615 Erie Boulevard West, Syracuse, New York 13204.

IV. Respondent's fishing and hunting guide license is revoked. The revocation period shall be from September 10, 2013 through September 9, 2014, provided respondent fully complies with Paragraph III above. If respondent fails to fully comply with Paragraph III above, the revocation period shall be for one year following the date that respondent surrenders his fishing and hunting license certificate, badge and license card to the Department as directed in Paragraph III above.

V. Respondent shall be ineligible to obtain a new fishing or hunting guide license during the revocation time period provided for in Paragraph IV above.

VI. All communications from respondent to the Department concerning this order shall be made to Anthony London, Esq., at the address provided for in Paragraph II above.

VII. The provisions, terms and conditions of this order shall bind respondent Patrick A. Mahoney, and his agents, successors and assigns, in any and all capacities.

For the New York State Department of
Environmental Conservation

By: _____/s/_____
Joseph J. Martens
Commissioner

Dated: January 27, 2014
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter of the Proceeding to Revoke
the Fishing and Hunting Guide License

- of -

PATRICK MAHONEY

Guide Identification No. 1619

Pursuant to the Provisions of
Article 11 of the New York State Environmental Conservation Law
and
Section 197.8 of Title 6 of the Official Compilation
of Codes, Rules and Regulations of the State of New York

HEARING REPORT

by

_____/s/_____
Maria E. Villa
Administrative Law Judge

July 1, 2013

PROCEEDINGS

This report addresses a request for a hearing by Patrick Mahoney (the "Licensee") in connection with a determination by the New York State Department of Environmental Conservation ("DEC" or "Department") to revoke Mr. Mahoney's fishing and hunting guide license (Guide Identification No. 1619) (the "License").

By letter dated May 23, 2011, Joseph J. Zeglen, the Director of the Department's Division of Forest Protection, advised Mr. Mahoney that his guide license would be revoked as a result of Mr. Mahoney's conviction, on or about May 2, 2011, in Albion Town Court, Criminal Part, Oswego County. Mr. Mahoney was convicted after a jury trial of petit larceny, reckless assault, and fighting in a public fishing area. Fighting in a public fishing area is a violation of Section 59.1 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). Pursuant to Section 197.8(b) of 6 NYCRR, a licensee may request a hearing within thirty days of receipt of the Department's notification of the intent to revoke. On May 27, 2011, counsel for Mr. Mahoney advised Department Staff that Mr. Mahoney's conviction had been stayed pending appeal, and that any action on the revocation should be held in abeyance pending the outcome of that appeal. In the alternative, Mr. Mahoney requested a hearing. On August 26, 2011, the Oswego County Court vacated the stay of sentence and affirmed Mr. Mahoney's conviction and the sentence of the Albion Town Court.

In a notice of hearing and complaint dated December 28, 2011, Department Staff sought an order finding Licensee in violation of Section 59.1 of 6 NYCRR "by engaging in fighting or assault of another person in a public fishing rights area." Exhibit 1, ¶ A. According to the complaint, on or about April 8, 2010, Mr. Mahoney "unjustifiably assaulted and fought with the victim, William Murray, by charging at him and striking him in the head and body at the Salmon River in the Town of Albion, County of Oswego, New York which is a public fishing rights area." Exhibit 1, ¶ 19.

Department Staff also requested that Licensee be ordered to immediately surrender his license badge, license certificate, and license card to the Department's Region 7 office in Syracuse, and that the license be revoked for a period of one year from the date the license was surrendered. *Id.*, ¶¶ B and C. In addition, Department Staff requested a penalty of \$200.00 (two hundred dollars), pursuant to Environmental Conservation law ("ECL") Section 71-0925(1). *Id.*, ¶ D. Licensee filed an answer dated February 2, 2012, and asserted three affirmative defenses: that Licensee's actions were taken in self-defense; that Licensee's actions were justified and taken pursuant to an agreement with DEC to act as a confidential informant for DEC against William Murray; and that those actions were taken "because of the negligent, reckless, and intentional conduct of DEC officers in exposing his identity as their confidential informant to William Murray."

The parties engaged in settlement discussions during 2012 but failed to reach a resolution, and a hearing was held on May 16, 2013 at the Department's Region 7 offices at 615 Erie Boulevard West, Syracuse, New York. Department Staff was represented by Anthony London, Esq., of the Department's central office in Albany. Environmental Conservation Officer ("ECO") Matthew Dorrett and retired investigator Karen Williams testified on behalf of Department Staff. In addition, William Murray and Bruce Rogers appeared pursuant to subpoenas served by Department Staff. Mr. Mahoney appeared on his own behalf. Mr. Mahoney did not testify, but called as a witness his wife, Kristin Mahoney.

The parties elected to make closing statements on the record, rather than providing post-hearing briefs. Upon receipt of the transcript, the ALJ advised the parties that if any party wished to make a further submission, such submissions must be received by June 12, 2013. The ALJ indicated that if no submissions were received, the record would close on that date. On June 12, 2013, Mr. Mahoney telephoned to request an additional two days to provide his submission. The ALJ granted that request, and on June 13, 2013, Mr. Mahoney submitted a letter via telefacsimile, as well as a telefacsimile of a letter from his wife, Kristin Mahoney.

STATUTORY AND REGULATORY PROVISIONS

Section 59.1 of 6 NYCRR is applicable to "all boat-launching sites, fishing-access sites, parking areas for fisherman and public fishing rights areas under the jurisdiction of the Division of Fish and Wildlife of the Department of Environmental Conservation." In pertinent part, the regulation states that "[n]o person shall: use threatening, abusive or insulting language; . . . do any act tending to or amounting to a breach of the peace; . . . [or] engage in, instigate, aid or encourage a contention or fight, or assault any person." Section 59.1(k). Section 197.8(a) of 6 NYCRR provides that

[w]henver the department determines that any licensed guide has violated any of the provisions of the Environmental Conservation Law, or of Title 6 of the *Official Compilation of Codes, Rules and Regulations of the State of New York* or of any permit issued by this department, the department shall notify, by registered or certified mail, the licensed guide of its finding and of the revocation of the guide's license. Upon receiving such notification of revocation the licensee must deliver the license badge, license certificate and license card within five calendar days to the regional ranger for the area in which the licensee resides or to the superintendent of forest protection and fire management if there is no regional ranger or if the licensee resides outside the State.

The revocation period will not exceed one year, and the penalty proposed in the Department's notice of revocation shall take effect 31 days after the licensee's receipt of the notice, unless a hearing has been requested. Section 197.8(c) and (d). ECL Section 11-0533 addresses the

licensing of guides, and Section 11-0533(7) provides that “[a]ny licensed guide who violates any provision of this chapter . . . shall in addition to any other penalties, immediately surrender his license to the department, which may be revoked by the department for up to one year following the date of such surrender.”

FINDINGS OF FACT

1. Patrick Mahoney is a licensed fishing and hunting guide, Guide Identification No. 1619. Mr. Mahoney’s license (the “License”) was issued on or about September 9, 2008, and expires on September 9, 2013. (Exhibit 1A).
2. On or about May 2, 2011, Patrick Mahoney was convicted after a jury trial in Albion Town Court, Criminal Part, of reckless assault in the third degree in violation of Section 120.00 of the New York Penal Law, petit larceny in violation of New York Penal Law Section 155.25, and fighting in a public fishing area in violation of Section 59.1 of the 6 NYCRR. (Exhibit 1H).
3. Mr. Mahoney’s conviction was affirmed on appeal to the Oswego County Court. (Exhibit 1H).
4. By letter dated May 23, 2011, Joseph Zeglen, the Department’s Director of the Division of Forest Protection, notified Mr. Mahoney that the Department was taking action to revoke the License as a result of Mr. Mahoney’s conviction of a violation of Section 59.1(k) of 6 NYCRR. The letter informed Mr. Mahoney of his right to a hearing. (Exhibit 1F).
5. By letter dated May 27, 2011, Mr. Mahoney, through counsel, requested a hearing on the intended revocation.¹ (Exhibit 1G).

DISCUSSION

As set forth above, pursuant to Section 197.8 of 6 NYCRR, whenever the Department determines that any licensed guide has violated any of the provisions of the ECL or 6 NYCRR, the Department shall notify the licensed guide of its finding, and of the revocation of the guide’s license. The guide may request a hearing, and Mr. Mahoney did so in a timely manner.

Department Staff has requested that Mr. Mahoney’s guide license be revoked for a period of one year from the date that the license is surrendered to the Department. Tr. at 125. The license expires on September 9, 2013. In support of its position that Licensee violated Section 59.1(k) of 6 NYCRR, Department Staff offered evidence and testimony concerning the nature of the assault and the victim’s injuries, including materials developed during the investigation of the

¹ Mr. Mahoney’s counsel subsequently withdrew from representation. At the hearing, Mr. Mahoney appeared *pro se*.

incident, photographs, and a victim impact statement. Specifically, Department Staff offered the testimony of ECO Matthew Dorrett, who stated that on April 8, 2010, he responded to a report of a fight in the Ellis Cove area of the Salmon River. The Salmon River is a public fishing rights area under the jurisdiction of the Department's Division of Fish and Wildlife. Transcript ("Tr.") at 24.

When he arrived, ECO Dorrett found William Murray, who "seemed traumatized," and was bleeding from the face and shaking. Tr. at 26. According to ECO Dorrett, Mr. Murray and other individuals who were present indicated that Mr. Mahoney initiated the altercation, which took place while Mr. Murray was fishing in the Salmon River. Department Staff introduced photographs of Mr. Murray's injuries. Exhibits 9A-D. Mr. Murray later went to the hospital for treatment. Tr. at 33. Department Staff also introduced evidence of Mr. Mahoney's subsequent conviction in Albion Town Court for the New York Penal Law violations (reckless assault in the third degree and petit larceny), and fighting in a public fishing area, a violation of Section 59.1(k) of 6 NYCRR. Finally, Department Staff introduced a copy of the decision of the Oswego County Court, affirming Licensee's conviction on appeal.

On cross-examination, ECO Dorrett acknowledged that it was likely that he had told Mr. Mahoney to contact him if Mr. Mahoney observed illegal fishing in the Ellis Cove area. Tr. at 42. ECO Dorrett stated that he had ticketed Mr. Murray for illegally snagging fish just prior to the incident on April 8, 2010. ECO Dorrett recalled going to Mr. Mahoney's house and telling Mr. Mahoney that he had charged someone with snagging, but stated that he did not recall if he told Mr. Mahoney the name of the person charged. Tr. at 49, 51. ECO Dorrett assured Mr. Mahoney that his identity as the complainant would be kept anonymous. *Id.* When asked if he was aware that Mr. Mahoney's tires were cut shortly thereafter, ECO Dorrett acknowledged that he was. The officer stated that he always is careful to maintain the anonymity of confidential complainants, and that he did not think that Mr. Murray could have seen him stopped at Mr. Mahoney's house. Tr. at 52.

On redirect, ECO Dorrett stated that he was not aware of Mr. Murray being charged with damaging any property of Mr. Mahoney's, and that he never disclosed Mr. Mahoney's identity as a confidential complainant to Mr. Murray. Tr. at 54. The officer testified that he limited the time that he spent at Mr. Mahoney's house just to ensure that Mr. Murray or any of Mr. Murray's friends would not see him there. Tr. at 55. ECO Dorrett testified that he was told about an earlier confrontation between Mr. Mahoney and Mr. Murray in 2009, but that he was not aware of any charges being brought with respect to that incident. *Id.* During his testimony, the victim, William Murray also spoke about the incident in the Spring of 2009, stating that he and Mr. Mahoney had a physical altercation on the bank of the Salmon River. Tr. at 92-93. No charges were brought against Mr. Murray as a result of that incident. Tr. at 93.

Retired DEC investigator Karen Williams testified that she investigated the incident that occurred on April 8, 2010. Ms. Williams made reference to the supporting deposition of Tom Perry, who stated that the fight on April 8, 2010 "happened very fast. That a guy was kicking

and punching Bill Murray, and he was yelling something about having slashed tires.” Tr. at 64, Exhibit 11.

With respect to the occurrences on April 8, 2010, Mr. Murray testified that on that day he was fishing in the Salmon River in the vicinity of Ellis Cove. Tr. at 93. Mr. Murray stated that Mr. Mahoney hit and kicked him. Tr. at 94-95. The witness testified that he had his fishing gear with him at the time, that he was fishing immediately prior to the incident, and that he had done nothing to initiate physical contact with Mr. Mahoney. Tr. at 98. Mr. Murray testified that he sought treatment for his injuries at a hospital in Syracuse, as well as the VA Hospital. Tr. at 99-100.

Mr. Murray testified that he obtained an order of protection against Mr. Mahoney from the Albion Town Court.² Tr. at 101. The witness testified that he was afraid of Mr. Mahoney and Mr. Mahoney’s acquaintances and that he was afraid to fish alone. *Id.* Mr. Murray stated that he had never damaged any of Mr. Mahoney’s personal property. Tr. at 109.

Department Staff’s next witness, Bruce Rogers, testified that on the afternoon of April 8, 2010, he witnessed Mr. Mahoney’s assault on Mr. Murray. Mr. Rogers characterized the assault as “pretty violent,” resulting in cuts and bruises on Mr. Murray’s face, a bloody nose, and a bloody lip. Tr. at 113-114. On cross-examination, Mr. Rogers stated that he is a friend of Mr. Murray’s family, and lived with Mr. Murray’s niece for a number of years. Tr. at 115.

Mr. Mahoney called his wife, Kristin Mahoney, as a witness. Ms. Mahoney testified that she works as a paralegal in the office of Richard Chapman, Esq. Tr. at 118. Ms. Mahoney stated that she was not aware, in her twenty years of legal experience, of a guiding license being revoked on the basis of one misdemeanor. Tr. at 119. Ms. Mahoney testified that she had spoken with “Melissa,” in the Department’s licensing guide office, “maybe half a dozen times over the years to inquire about the process, and she had basically told me it was a three violation rule. If a guide received three violations relative to fishing, they would be subject to a one-year suspension.” Tr. at 119-120.

In closing, Department Staff stressed that Mr. Murray did nothing to provoke the attack by Mr. Mahoney, and that Mr. Murray suffered serious injuries. Department Staff took the position that a one-year revocation was appropriate under the circumstances.

Mr. Mahoney argued that his guide license was the basis of his livelihood, and that he had assisted the Department with respect to enforcement activities on the river. Mr. Mahoney stated that the incident in question was a personal matter between him and Mr. Murray, and had “nothing to do with guiding, fishing, or being on the river.” Tr. at 127. Mr. Mahoney said that he was never issued a criminal summons for a DEC violation, and offered five letters into evidence. Those letters were received over Department Staff’s objections as unsworn and

² In its opening statement, Department Staff noted that an order of protection had been issued on Mr. Murray’s behalf. Tr. at 9.

unsigned. Tr. at 130-131; Exhibits 16A-E. The letters state that Mr. Mahoney is very professional, helpful, and an enthusiastic guide who volunteers his time for Volunteers for Veterans. A May 15, 2013 letter from Zachary Hoyt of the St. Francis Farm Community stated that Mr. Mahoney had been helpful, enthusiastic, and “put in many extra hours after he had fulfilled his original term of community service. He has also continued to be involved with projects since that time.” Exhibit 16D.

Following receipt of the transcript, and with the authorization of the ALJ, Mr. Mahoney and Ms. Mahoney submitted letters. Mr. Mahoney pointed out that he had been “consistently proactive to make the river a better place.” He noted that this was the first time he had ever been in trouble, that he was found guilty of misdemeanor assault in the third degree and was still sent to jail, and that if he had not helped the Department to combat illegal fishing the incident and the subsequent proceedings would never have happened.

Ms. Mahoney wrote that her husband had been a licensed guide for twenty years without incident, and that her husband had worked hard as the primary breadwinner in their twenty years running the guide business. Ms. Mahoney noted that the suspension of his license could potentially put them out of business and threaten them with the loss of their home.

On this record, the violation of Section 59.1(k) of 6 NYCRR has been established. Mr. Mahoney was convicted after a jury trial of fighting in a public fishing area. Mr. Mahoney’s conviction was affirmed on appeal. Department Staff established the serious nature of the assault and the consequences to Mr. Murray as a result of that assault.

Mr. Mahoney offered argument rather than sworn testimony. Nevertheless, it is uncontroverted that Mr. Mahoney did provide confidential information concerning illegal fishing by Mr. Murray in the Ellis Cove area of the Salmon River. This lends credibility to Mr. Mahoney’s assertion that he had tried to assist the Department with its enforcement efforts.

CONCLUSION AND RECOMMENDATION

Revocation of Mr. Mahoney’s fishing and hunting guide license is supported by the record. Mr. Mahoney’s arguments at the hearing, however, would support a shorter revocation period than the one year requested by Department Staff. In determining the appropriate revocation period, I recommend that the Commissioner consider the following factors: Mr. Mahoney’s efforts to assist the Department in its enforcement efforts; the length of time remaining before Mr. Mahoney’s guide license expires on September 9, 2013; the time that has elapsed since Mr. Mahoney’s conviction and sentence were affirmed by the Oswego County Court in 2011; and the fact that Mr. Mahoney has been a licensed guide for twenty years without incident. Taking into account these factors, this report recommends that the revocation period be reduced by two to three months from the one year recommended by Department Staff. This recommendation assumes that the license would be surrendered on September 9, 2013, the date the license expires.

TO (via inter-office mail):

Anthony London, Esq.
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233-1500

(via certified mail, return receipt requested):

Patrick Mahoney
2624 State Route 13
P. O. Box 112
Altmar, New York 13302

Matter of Patrick Mahoney
 Fishing and Hunting Guide License Revocation Hearing
 May 16, 2013
EXHIBIT LIST

Exhibit No.	Description	ID'd	Rec'd	Offered By	Notes
1	Notice of hearing and complaint, both dated December 28, 2011	✓	✓	N/A	
1A	License to Guide, Guide Identification No. 1619 (issued September 9, 2008)	✓	✓	Department Staff	
1B	Supporting Deposition (April 8, 2010)	✓	✓	Department Staff	
1C	Certificate of Conviction (May 2, 2011)	✓	✓	Department Staff	
1D	March 17, 2011 letter from Eileen E. Collins, Senior Probation Officer, Oswego County Probation Department, to William Murray	✓	✓	Department Staff	
1E	May 13, 2011 Order Granting Stay of Judgment of Conviction and Sentence of Incarceration	✓	✓	Department Staff	

Exhibit No.	Description	ID'd	Rec'd	Offered By	Notes
1F	May 23, 2011 letter from Joseph J. Zeglen, Director, Division of Forest Protection, NYSDEC, to Patrick A. Mahoney	✓	✓	Department Staff	
1G	May 27, 2011 letter from David P. Antonucci, Esq., to Joseph J. Zeglen, NYSDEC	✓	✓	Department Staff	
1H	August 26, 2011 Decision and Order (Oswego County Court); entered September 9, 2011	✓	✓	Department Staff	Certified copy marked and substituted at hearing for original marked copy
2	February 2, 2012 Answer	✓	✓	N/A	
3	March 30, 2012 Notice to Produce	✓	✓	Department Staff	
4	August 8, 2012 notice of motion to compel disclosure and motion to compel	✓	✓	Department Staff	
5	January 24, 2013 letter from Patrick Mahoney to ALJ Villa, enclosing response to Department Staff's motion to compel	✓	✓	Department Staff	

Exhibit No.	Description	ID'd	Rec'd	Offered By	Notes
6	Affidavit of Personal Service (Murray)	✓	✓	Department Staff	
7	Affidavit of Personal Service (Rogers)	✓	✓	Department Staff	
8	May 6, 2011 Notice of Appeal	✓	✓	Department Staff	
9A-D	Photographs	✓	✓	Department Staff	
10	Call for service #10-005661	✓	✓	Department Staff	
11	Supporting Deposition (Tom Perry)	✓	✓	Department Staff	
12	Significant Incident Report	✓	✓	Department Staff	
13	Criminal Summons	✓	✓	Licensee	
14	Division of Law Enforcement Narrative Report	✓	✓	Licensee	
15	Supporting Deposition – John Biagini	✓	✓	Department Staff	

Exhibit No.	Description	ID'd	Rec'd	Offered By	Notes
16A	Peter Kovacs Letter	✓	✓	Licensee	
16B	May 15, 2013 e-mail from Robert Powell	✓	✓	Licensee	
16C	May 16, 2013 e-mail from Rob Storrs	✓	✓	Licensee	
16D	May 15, 2013 letter from Zachary Hoyt, St. Francis Farm Community	✓	✓	Licensee	
16E	May 15, 2013 e-mail from Eric Geary	✓	✓	Licensee	